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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 61

RADIO AND TELEVISION BROADCAST TECHNICIANS LOCAL UNION 1264, ETC., ET AL., PETITIONERS,

vs.

BROADCAST SERVICE OF MOBILE, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

PETITION FOR CERTIORARI FILED APRIL 15, 1964
CERTIORARI GRANTED OCTOBER 12, 1964

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN THE CIRCUIT COURT OF MOBILE COUNTY
STATE OF ALABAMA
IN EQUITY

ORGANIZATION OF COURT

At a Regular Session of the Circuit Court of Mobile County, Alabama at which the Officers authorized by law to hold or serve such Court were serving, the following proceedings were had in the cause styled:

BROADCAST SERVICE OF MOBILE, INC., Complainant,

vs.

LOCAL 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, and WILLIAM RAYBURN, DAVID FRIDGE and H. D. SMITH, Respondents.

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

No. 58,568-H

ORIGINAL BILL AND FIAT—Filed September 4, 1962

To the Honorable Judges of the Circuit Court of Mobile County, Alabama, Sitting in Equity:

Comes now Broadcast Service of Mobile, Inc., by and through its Treasurer, Carl S. Lightsey, Jr., who alleges that he is expressly authorized by this Corporation to act for it in this matter, and shows unto your Honors as follows:

1. Complainant is an Alabama Corporation engaged in the business of Commercial Radio Broadcasting in Prichard, Alabama. All of the Respondents are over the age of twenty-one (21) years and are residents of Mobile County, Alabama, with the exception of the Respondent Local 1264

of the International Brotherhood of Electrical Workers, of the International Brotherhood of Electrical Workers, a labor Union which does business in Mobile County, Ala-
[fol. 2] bama and has as its place of business 31 Church Street in the City of Mobile, Alabama.

2. Heretofore, on, to-wit, August 10, 1962, said Respondents Rayburn, Fridge and Smith, engaged themselves in a picket line in front of the studios of Radio Station WSIM which Radio Station is owned by your Complainant, Broadcast Service of Mobile, Inc. At that said time and place said Respondents Rayburn, Fridge and Smith composed the picket line demonstration which said picket line demonstration included the exhibition of one or more signs which said signs alleged that Radio Station WSIM is a non-union station. Subsequently and on, to-wit, August 13, 1962, a picket line demonstration was again operating in front of the studios of said Radio Station and on this occasion the said signs had written on them the initials in capital letters "IBEW."

Your Petitioner avers that subsequent to the approval of the Federal Communications Commission and on, to-wit, August 1, 1962, your Complainant bought the assets of Radio Station WAIP in Prichard and began operating its duly licensed Broadcast Station WSIM at the same location and with substantially the same technical inventory which formerly was the location and the property of Radio Station WAIP.

Your Complainant further avers that Respondent David Fridge and Respondent H. D. Smith demanded on or about August 1, 1962 that Respondent Fridge be put on the pay roll of this new Broadcast Station as a broadcast engineer. Respondent Fridge is a former employee of Radio Station WAIP and was working under a Union contract which had been executed between Radio Station WAIP and the International Brotherhood of Electrical Workers Union. Your Complainant further avers that at that time and place Respondent H. D. Smith held himself out as a representative of the said Respondent Union. Complainant avers that manager John Hale of Radio Station WSIM stated to Respondents Fridge and Smith in substance that the cor-

poration, your Complainant, would have to have time to decide what steps if any would be taken toward the employment of an engineer and a contract if any with any labor organization would be made.

[fol. 3] Your Complainant further alleges that the present staff engineer on duty with Radio Station WSIM is an employee from another station owned by your Complainant and is not a permanent employee nor a resident employee of the new station.

Further, your Complainant submits to this Honorable Court that on, to-wit, Friday, August 10, 1962, the President of your Complainant, Charles W. Holt conferred with one of the Unions interested in collective bargaining with Complainant Corporation and made an appointment with a representative of said Union for Monday, August 13, 1962, to be held in the law offices of Stone & Howard in the First National Bank Building in Mobile. Complainant further avers that a representative of Complainant has sought an appointment also with a representative of the International Brotherhood of Electrical Workers, Local 1264.

Your Complainant avers and shows unto this Court that acting in good faith your Complainant has conferred with both Unions Respondents and the Electronics Workers Union applying for a labor contract.

Your Complainant avers that the said IBEW Local 1264 has continued its picketing and has also caused letters to be sent to advertisers of the Complainant Company which said letters and said picketing have resulted in cancellation of advertising schedules gained by the newly opened business of the Complainant.

3. Your Complainant further avers that during the period from August 1962 when it began broadcasting activities it has in good faith restrained itself from any counteraction against these Respondents; that it has steadfastly sought to arrive at an equitable arrangement with regard to collective bargaining by conferring on numerous occasions with both the Respondent Union and its representatives and the Electronics Workers Union and its representatives; that your Complainant has sought and received

legal advice on many occasions; that your Complainant simply desires to follow what it believes to be proper legal procedures under the Alabama Right to Work Law and the provisions of federal law with regard to the holding of an election by the employees themselves to determine what [fol. 4] labor organization, if any, said employees wish to have as a collective bargaining agent.

Further, your Complainant avers that it has communicated this desire and intention to said Respondents.

4. To this Honorable Court your Complainant avers that it has requested that Respondent Local 1264 to cease and desist for a temporary period of the 60 or even 30 days picketing and contacting of advertisers until your Complainant has an opportunity to select its permanent engineering staff to give said staff an opportunity to elect which labor organization, if any, it wishes to represent it. To every such request, your Complainant avers that the Respondent Local 1264 has refused.

5. Your Complainant respectfully avers that it offers to do equity.

Prayer for Process

Complainant prays that process issue and be served upon the said Local 1264 International Brotherhood of Electrical Workers by service upon H. D. Smith, its business agent, and that process issue and be served upon the said H. D. Smith, William Rayburn and David Fridge individually requiring them to appear and plead, answer or demur to the allegations of this Complaint within the time required by law.

Prayer for Relief

Complainant prays that your Honors will issue forthwith its order temporarily restraining the Respondents and each of them and all persons acting by, through or in concert with them, from taking any steps or instituting any action to interfere with the conduct of the business of the Complainant, to remain in effect until the Court shall hear the application of your Complainants for a temporary in-

junction which shall be upon notice to the Respondents at a time and place to be fixed by the Court and pending the final hearing of the issues stated within.

And Complainant further prays that upon a final hearing of the cause, your Honors will temporarily enjoin the Respondents and each of them and all persons acting by, through or under them or any of them, from interfering in any manner with the conduct of its said business and operations for a period of ninety days so that Complainant [fol. 5] may properly select its employees and give said employees an opportunity to elect for themselves which labor organization, if any, they desire to have represent them in collective bargaining.

Ralph O. Howard, Solicitor for Complainant.

Duly sworn to by Carl S. Lightsey, Jr., jurat omitted in printing.

[File endorsement omitted]

[fol. 7]

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

PLEA TO THE JURISDICTION

Come the Respondents in the above matter who have been legally served, and appearing specially for the purpose of filing this Plea to the Jurisdiction and for no other purpose and without waiving any other defenses which they may have in law or in equity, respectfully show the Court the following facts:

1.

The Respondent, Local 1264, International Brotherhood of Electrical Workers, is an unincorporated voluntary association of individuals and is a labor organization within the meaning of the National Labor Relations Act, as amended, (29 USC, Section 151, et seq.).

The individual Respondents, William Rabon, David Fridge and H. D. Smith, are members of such organization.

2.

The Complainant, Broadcast Service of Mobile, Inc., is an employer within the meaning of the National Labor Relations Act, as amended.

3.

The Respondent Union has as its members and represents in matters of collective bargaining with their employers in the Mobile, Alabama, area, persons who are licensed [fol. 8] broadcast engineers, certificated by the Federal Communications Commission and often referred to as radio and television technicians. It has collective bargaining agreements in effect with virtually all radio and television stations in the Mobile, Alabama, area covering the wages, hours and conditions of employment of the radio technicians employed by these stations. The members of such organization have worked long and diligently over many years to establish high working standards and beneficial wage levels.

4.

One of the radio stations with which the Respondent had in effect a collective bargaining agreement was Radio Station WAIP operating at Prichard, Alabama, and broadcasting throughout the Mobile area. The physical facilities of such station were purchased by Complainant and Complainant began operation on August 1, 1962. As is alleged in Complainant's bill for injunction, Complainant began broadcasting with a temporary employee whose hours of work, wages and conditions of service were substantially below those established as the standard in collective bargaining agreements in effect between Respondent Local 1264 and other radio stations in the Mobile area.

5.

Such operation of Complainant constituted unfair and disadvantageous competition with other radio stations in the Mobile area who operate under collective bargaining agreements and therefore threatens to undermine the

wages, hours, conditions of employment and high working standards which have been attained by the members of Local 1264 through long years of diligent effort.

6.

On account of such substandard conditions and unfair competition and in order to advise the public and persons who might do business with Complainant by advertising on Station WSIM thereof, Respondent Union stationed two pickets at the premises of Complainant occupied by the studio of Radio Station WSIM on August 10, 1962, which two pickets walked back and forth carrying signs which advised that the station was operating under non-union conditions. Such picketing was also conducted on August [fol. 9] 11 and on weekdays from August 13 through the present except on Labor Day. Such picketing is conducted two hours in the morning and two hours in the afternoon at normal times of shift change.

7.

The members of Respondent Union have contacted persons and businesses advertising over Station WSIM and have advised such persons that Radio Station WSIM is being operated under substandard conditions without a collective bargaining agreement in effect and have requested such advertisers to patronize radio stations who adhere to Union standards rather than Radio Station WSIM. A list of advertisers contacted is attached hereto and made a part hereof as Exhibit 1.

8.

Respondent further shows that such advertisers each purchases, directly and indirectly, goods which are shipped in interstate commerce and some of such advertisers ship goods in interstate commerce. The combined purchases and shipments of goods in interstate commerce of such advertisers annually far exceed $50,000 in value. Further, Delchamps is a retail grocery chain, the annual dollar volume of sales of which far exceeds $500,000.

9.

The activities of Respondent which are complained of by the Complainant in its bill for injunction therefore substantially affect interstate commerce, and the National Labor Relations Board has exclusive jurisdiction over the provisions of the National Labor Relations Act, as amended, to afford any relief to Complainant to which it is entitled under the provisions of such law. Attached hereto and made a part hereof is a petition for an Advisory Opinion addressed to the National Labor Relations Board in the case of Local Union 1264, IBEW and Jemcon Broadcasting Company, and also copy of the decision of the National Labor Relations Board rendered upon such petition holding, in a case substantially identical to the present, that it had jurisdiction over the dispute between respondent and the complainant, which decision is direct authority [fol. 10] that the National Labor Relations Board has jurisdiction to adjudicate the allegations contained in Complainant's bill for injunction.

10.

Complainant's radio broadcast business causes Complainant to be engaged in interstate commerce and Complainant is an instrumentality of commerce whose business affects interstate commerce within the meaning of the National Labor Relations Act and whose labor relations are subject to the exclusive jurisdiction of the National Labor Relations Board.

11.

Respondents further show that their activities constitute concerted activity for their mutual aid and protection the right to engage in which is guaranteed and protected by the National Labor Relations Act (29 USC, Section 157).

12.

The jurisdiction of the National Labor Relations Board over the subject matter of Complainant's bill for injunction is exclusive.

13.

For this Court to assume jurisdiction to grant relief on Complainant's bill for injunction would be unconstitutional and invalid and in derogation of the authority granted to the Congress of the United States by Article I, Section 8, Paragraph 3 of the Constitution of the United States to regulate interstate commerce, and of Article VI, Paragraph 2, of the Constitution of the United States providing that the Constitution and laws of the United States are the supreme law of the land and anything in the Constitution or laws of any State to the contrary notwithstanding because pursuant to such power the Congress has assumed jurisdiction over the subject matter of the bill for injunction and has empowered the National Labor Relations Board to grant relief with respect thereto by enacting the National Labor Relations Act, as amended, (29 USC, Section 151, et seq.).

Wherefore, Respondents pray that this Plea be considered and sustained and that the Complainant's bill for injunction be dismissed.

[fol. 11] Adair, Goldthwaite & Stanford, Morgan C. Stanford.

1431 Candler Building, Atlanta 3, Georgia, 523-2525.

Pierre Pelham, First National Bank Annex, Mobile, Alabama.

Duly sworn to by H. D. Smith, jurat omitted in printing.

EXHIBIT 1 TO PLEA TO THE JURISDICTION

In Evidence
Complainant's
Exhibit 9-A
EL

WSIM ADVERTISERS

Mobile Service Co., Inc. (Janitorial Service)
Ideal Auto Parts
AAA Auto Parts (Used auto parts)

Edmond Realty Co.
*Pat's Auto Parts
Sam Joy Laundry & Cleaners (Approx. 1 dozen stores)
Sigler's Tire & Recapping Co.
Carver's Sundries (Drug Store)
Britt Plumbing Co.
Dixie Supply Co. (Building materials)
Hamm's TV & Appliance Co.
*Long's Cash Grocery
Domestic Loans of Mobile, Inc.
*Pepsi Cola Bottling Co.
[fol. 12] S. H. Cochran Furniture Co.
*Coleman Furniture and Mattress Co.
Blackwell Heating & Airconditioning *
Underwood Builder's Supply Co. (Two stores)
*Prichard Trading Post (Used furniture and appliances, Misc.)
Joe Bullard Oldsmobile, Inc.
Prichard Ins. and Real Estate Agency.
ABC Television & Appliance Service
Delaney's (Appliance mart).
*Baxter's Clothes (Two store chain)
*Econo-wash
*Burch's Cleaners and Laundry
*Taylor's Service Garage
Merchants National Bank
*Jesse French Company (French Piano Chain)
Adams Furniture & Appliance Co. (Two store chain)
*Jernigan's (hardware)
*Christian Book Store
*Ray's Drug Store
Delchamps (Interstate grocery chain-store in Alabama & Florida)
*Domestic Loans
S & H Green Stamp Store (National chain)
Arrow Cleaners
W. T. Grant Co. (National chain-two stores in Mobile area)
Bowlarena

Letters (form attached) were sent to all advertisers.
*Advertisers marked by asterisk were contacted personally.

RADIO BROADCAST TECHNICIANS UNION
LOCAL 1264, IBEW, AFL-CIO
479-2432

Compits Ex 9-B
In Evidence
9/10/62
E. L.

TO ALL MERCHANTS IN THE MOBILE-PRICHARD AREA:

Since Radio Station WAIP first began broadcasting in the Prichard area some several years ago, it had carried on a union operation and the wages and working conditions of the WAIP technicians have been covered by a collective bargaining agreement between WAIP and this local Union. [fol. 13] On August 1, 1962 the Holt Broadcasting Service purchased WAIP and changed the name of the Station of WSIM. All the technicians and announcers, most of whom were employed with the station for many years, were immediately relieved of their jobs and replaced by people brought in from out of town. W S I M is now operating as a NON-UNION station.

In order to bring this matter to the attention of the advertisers and the general public, members of this local union are presently picketing the WSIM studios located in downtown Prichard. Radio Broadcast Technicians Local 1264, I. B. E. W., AFL-CIO respectfully request that you as an advertiser, respect our picket lines at WSIM and help us preserve the decent wages and working conditions which we have established over a period of years, by placing your advertising only with UNION STATIONS.

Your cooperation and support will be deeply appreciated.

Very truly yours,

H. D. Smith
H. D. Smith, Business Agent
LU 1264, I.B.E.W., AFL-CIO

(Seal)

ATTACHMENT TO PLEA TO THE JURISDICTION

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

WASHINGTON, D. C.

RADIO BROADCAST TECHNICIANS LOCAL UNION NO. 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, an Unincorporated Association, Petitioner,

and

E. W. JEMISON and FRANK CONWELL, Partners, Doing Business as JEMCON BROADCASTING COMPANY, Respondents.

In Evidence
Compts Ex 9-C
9/10/62
E L

PETITION FOR ADVISORY OPINION

Comes now Radio Broadcast Technicians Local Union No. 1264 of the International Brotherhood of Electrical Workers, AFL-CIO, and, pursuant to Sections 102.98 et seq. of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, respectfully petitions [fol. 14] the Board for an advisory opinion with respect to the jurisdiction of the Board over a labor dispute as hereinafter described.

1.

Petitioner is a labor organization within the meaning of the National Labor Relations Act, as amended, having its business location in Mobile, Alabama, within the Fifteenth Region of the National Labor Relations Board.

2.

Petitioner is a party to a proceeding now pending in equity in the Circuit Court of Mobile County, Alabama, same being case number 56,748 in equity, on the docket of Judge Dan T. McCall, Jr., in said Court.

3.

The plaintiffs in such proceeding, who are named Respondents, herein, are E. W. Jemison and Frank Conwell doing business as Jemcon Broadcasting Company. Respondents are residents of Mobile County, Alabama, and operate Radio Station WLIQ in Mobile. Respondents filed such proceeding, which is a bill for injunction, in the Circuit Court of Mobile County, Alabama, in equity, and an ex parte restraining order issued without notice or hearing, enjoining and preventing the Petitioner herein and its members from engaging in primary picketing at the premises of Radio Station WLIQ and from contacting the advertisers of such radio station to request them to refrain from advertising with such station and enjoining Petitioner from distributing literature to advertisers and customers of advertisers which requested such persons to cease doing business with Radio Station WLIQ. Copy of said bill for injunction, together with all exhibits thereto and the injunction issued against Petitioner is attached hereto and made a part hereof as Exhibit 1, pages 1 through 30. Such bill for injunction was filed by plaintiff therein on October 25, 1961. In response to said bill for injunction defendants are filing a plea to the jurisdiction and motion to dismiss, upon the grounds that the National Labor Relations Board has exclusive jurisdiction over the labor dispute which is the alleged subject of said bill for injunction.

[fol. 15]

4.

The allegations of Paragraphs 1, 2, 3, 4, 5, 9, 10, 11, 12, 19, 20, 21, 22 and 23 of such bill for injunction are substantially true and correct. The remaining allegations of the bill for injunction are inaccurate, misleading, incomplete, are based upon half-facts and misrepresentations and are denied by Petitioner. Exhibits A, B, C, F and G and also

the letter attached to the affidavit of Richard V. McMullen are true and correct copies of the documents which they purport to represent. Petitioner does not admit the assertions of fact contained in the affidavits attached to said bill for injunction as the same are half-truths, misstatements, misrepresentations, and misleading. The entire allegations of the bill for an injunction, if they were true, would set forth violations by Petitioner of Section 8(b) (4) and possibly of Sections 8(b) (1) and (2) of the National Labor Relations Act, as amended.

5.

The material facts of said labor dispute are that on August 28, 1961, WLIQ employees Frank Reindel and Larry Young, who are first class broadcast technicians, holding fiirst class radio-telephone operator licenses from the Federal Communications Commission, applied for membership in Petitioner and designated it as their collective bargaining representative. Said persons comprised two out of three employees in an appropriate collective bargaining unit, comprised of all broadcast engineers of Station WLIQ, there being only three of such employees in a traditional craft unit. On the same day employee Reindel advised other employees of Station WLIQ that he had joined the Union. On the following day, August 29, Petitioner demanded recognition (exhibit B to the Bill for Injunction). On August 31 Station WLIQ declined recognition until Board certification was obtained by Petitioner (Exhibit C to the bill for injunction).

On August 30, Respondent Frank Conwell delivered a letter of discharge to Frank Reindel, a copy of which is attached hereto and made a part hereof as Exhibit 2, and thereby effectively dissipated Petitioner's majority status. On September 14 employees Reindel and Young went on strike in protest over the discharge of employee Reindel and to request recognition for Petitioner. On September 18 [fol. 16] Petitioner filed a petition for an election with NLRB, Fifteenth Region, which after investigation was dismissed for want of sufficient effect on commerce (Ex-

hibit G to the bill for injunction.) Immediately thereafter Respondents herein caused their employees to form the "Federation of Licensed Broadcast Employees" and procured private election to be conducted by Rev. Hoyt Winslett following which respondents recognized said spurious labor organization and entered into a collective bargaining contract with it. (See Exhibit E to the bill for injunction). The five persons who voted include Sales Manager Frank Sturgis, III, who is a licensed radio-telephone operator but is not a member of the engineering department of said station, and also a second class radio-telephone operator who is not a part of said engineering department.

6.

As a part of its activity in the dispute with Station WLIQ, Petitioner's members have personally contacted twelve advertisers of Station WLIQ and requested that they cease advertising on said station. In addition, Petitioner caused two separate letters to be mailed to every concern which was a current or past advertiser of the station. (Exhibit 3—copy of same letter which is attached to the affidavit of Richard V. McMullen as an exhibit to Respondents' bill for injunction—and Exhibit 4). A list of companies personally contacted is attached hereto as Exhibit 5 and a list of advertisers who were mailed Exhibits 3 and 4 are attached as Exhibit 6. Petitioner also requested other unions and customers of advertisers to send postcards to advertisers and ask them to cease doing business with Station WLIQ, (Exhibit F to the bill for injunction).

Radio Station WLIQ began broadcasting on or about January 25, 1961, and by the beginning of September, 1961, had cash sales of $30,000.00, more or less. This figure does not include numerous "trade outs", that is, exchanges of advertising for goods and services such as with Climatic Engineering Company which airconditioned the radio station, with Marion P. Taylor Garage which renders automobile services to Respondents, with Television Headquarters which supplies record albums and the like. Neither does this figure include sales of piped-in background music [fol. 17] to various business houses such as Awtry Greer & Sons, Inc., which is a sideline business of Station WLIQ.

7.

The secondary employers affected by Petitioner's activities during the dispute with WLIQ are such advertisers as Awtry Greer & Sons, Inc., mentioned in Paragraphs 19 and 20 of the bill for injunction, which operates a chain of 8 or 9 retail grocery stores in the States of Alabama and Mississippi and also operates a wholesale warehouse which sells and ships at wholesale to ships and ship suppliers in the port of Mobile. Said business does a gross yearly volume in excess of $500,000.00 and meets the Board's retail standard. It also purchases goods outside the State of Alabama annually valued in excess of $500,000.00. (See Awtry Greer & Sons, 112 NLRB 44).

Of said advertisers Delchamps, Inc., operates the largest chain of retail groceries in the Mobile geographic area, having 15 to 20 retail grocery stores in the States of Alabma, Mississippi and Florida and operating in the City of Mobile, Alabama and a large central purchasing and distribution warehouse which services said stores. Such business has sales in excess of $500,000.00 and makes purchases annually outside the State of Alabama valued in excess of $500,000.00.

Of the other advertisers, the Budweiser Distributing Company, Johnson Chevrolet, Inc., Green Lincoln-Mercury, and Hotz GMC trucks, Inc., each makes retail sales in excess of $500,000.00 annually and Budweiser Distributing Company, a wholesale beer distributor, makes out-of-state purchases annually valued far in excess of $50,000.00. Johnson Chevrolet, Inc. and Hotz GMC Trucks, Inc., each sells to fleet, or wholesale, accounts, and renders wholesale sales and services to business houses of automobiles and automobile parts, trucks and truck parts, and make repairs to the same, all of which automobiles and parts are purchased without the State of Alabama and greatly exceed $50,000.00 annually for each such business. In addition, the combined gross sales of the remaining advertisers are many times in excess of $500,000.00, so that Petitioner's dispute with Respondents affects commerce substantially.

[fol. 18] 8.

Petitioner cannot state whether Respondent will admit such commerce facts.

9.

The allegations of Respondent's bill for injunction state that Petitioner threatened and coerced said advertisers to cease doing business with Respondents, so that such bill for injunction alleges an unfair labor practice under Section 8(b) (4) of the National Labor Relations Act, as amended, but on the other hand if, as Petitioner contends, Petitioner only solicited such advertisers and persons to cease doing business with Respondents, then such activities of Petitioner and its agents and members were protected concerted activity under the National Labor Relations Act as amended.

10.

No other cases with regard to this case are now pending with regard to this dispute.

Wherefore, Petitioner prays that the National Labor Board issue its advisory opinion as to whether the National Labor Relations Board has jurisdiction and would assume jurisdiction over the labor dispute alleged in Respondents' bill for injunction and as to whether the Board would, collaterally with its assumption of jurisdiction because of the effect of the labor dispute upon interstate commerce through the advertisers, assume jurisdiction of all collateral charges and complaints of improper conduct made by Respondents in its bill for injunction even though the business of Respondents alone might not be sufficient to induce the Board to assume jurisdiction. (See in this connection *Riley Cartage Company,* 110 NLRB 1742.)

Respectfully submitted,

Adair, Goldthwaite & Stanford, Attorneys for Petitioner.

1431 Candler Building, Atlanta 3, Georgia, Jackson 3-2525.

[fol. 19] I hereby declare under the penalties of the Criminal Code that the contents of this petition for advisory opinion are true and correct to the best of my information and belief.

J. R. Goldthwaite, Jr.

Certificate of Service (omitted in printing)..

In Evidence
Compt's Ex. 9-D
9-10-62
E L

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. AO-29

E. W. JEMISON and FRANK CONWELL, Partners, doing business as JEMCON BROADCASTING COMPANY,

and

RADIO BROADCAST TECNICIANS LOCAL UNION NO. 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO.

ADVISORY OPINION

This is a petition filed by Radio Broadcast Technicians Local Union No. 1264, International Brotherhood of Electrical Workers, AFL-CIO, herein called the Petitioner, for an Advisory Opinion in conformity with Section 102.98 of the Board's Rules and Regulations, Series 8.

A. In pertinent part, the petition alleges as follows:

1. The Petitioner, a labor organization within the meaning of the Act, is a party defendant to an equity proceeding in the Circuit Court of Mobile County, Alabama, docketed as Case No. 56,748 in equity. Said proceeding was instituted on October 25, 1961, by the plaintiffs, E. W. Jemison and Frank Conwell, partners, doing business as Jemcon Broadcasting Company, herein called the Employer or

primary Employer, who operate Radio Station WLIQ in Mobile, Alabama. The suit seeks an injunction and an ex [fol. 20] parte restraining order enjoining and preventing the Petitioner and its members (1) from engaging in primary picketing at the Employer's Radio Station WLIQ; (2) from contacting the station's advertisers with a request that they refrain from advertising with such station; and (3) from distributing literature to advertisers and customers requesting that they cease doing business with Radio Station WLIQ. The Employer's bill for injunction alleged, *inter alia,* that the Petitioner has intimidated and coerced persons doing business with the Employer by threatening to institute a boycott against them unless they cease doing business with the Employer.

2. On October 25, 1961, that Court authorized the issuance of a temporary writ of injunction upon the posting of a $500.00 bond by the Employer.

3. In its response to the bill for injunction, the Petitioner intends to file a plea to the Court's jurisdiction and a motion to dismiss on the grounds that the Board has exclusive jurisdiction over the labor dispute which is the subject of the injunction proceeding. The Petitioner urges that the bill for injunction sets forth allegations which constitute an unfair labor practice in violation of Section 8(b) (4) (and possibly of 8(b) (1) and (2)) of the Act by threatening and coercing advertisers to cease doing business with the primary Employer; but it further urges that the conduct of the Petitioner, its agents, and members was protected concerted activity under the Act.

4. The Employer began operating Radio Station WLIQ in Mobile, Alabama, on or about January 25, 1961. During the period from January 25, 1961 to the beginning of September, 1961, Radio Station WLIQ had cash sales of $30,000 more or less. This figure did not include "trade outs" (exchange of advertising for goods and services) or sales of piped-in background music to various business houses such as Autry Greer & Sons, Inc., over which the Board has, in the past, asserted jurisdiction.[1]

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[1] *Autry Greer & Sons,* 112 NL RB 44.

[fol. 21] 5. The material facts relating to the labor dispute between the Petitioner and the Employer show that the dispute began on August 31, 1961, when in reply to the Petitioner's letter of August 28, requesting recognition as the bargaining representative of the Employer's technicians, the Employer refused to do so until the Petitioner was certified by the Board. Thereafter, on September 14, two technicians went on strike to protest the Employer's discharge of one of them and to request recognition for the Petitioner.

6. On September 18, 1961, the Petitioner filed with the Board a petition for certification of representatives pursuant to a Board election in Case No. 15-RC-2444. On September 25, the Regional Director for the Fifteenth Region dismissed the petition on the grounds that "the Employer's operations in interstate commerce do not meet the minimum standards of the Board for the assertion of jurisdiction." No appeal to the Board was taken by the Petitioner from this dismissal. Thereafter, following a private election, the Employer recognized a newly formed labor organization as the bargaining representative of its employees.

7. As part of its activity arising from the dispute with the primary Employer, the Petitioner picketed Radio Station WLIQ, and its members personally contacted 12 advertisers of the Radio Station requesting that they cease advertising with the primary Employer's Radio Station WLIQ. In addition, the Petitioner caused two separate letters to be sent to every concern which was a current or past advertiser of the station requesting that they respect the Petitioner's primary picket line at Radio Station WLIQ. The Petitioner also requested other unions and customers of advertisers to send postcards to advertisers asking them to cease doing business with the primary Employer's Radio Station WLIQ.

8. Secondary employers affected by the Petitioner's aforesaid activities arising from its dispute with the primary Employer include advertisers such as Autry Greer [fol. 22] & Sons, Inc., and Delchamps, Inc., interstate chains of retail grocery stores operating in Mobile; Budweiser Distributing Company, a retail and wholesale beer distributor in Mobile; Johnson Chevrolet, Inc., a Mobile

tomobile dealer; and Hots GMC Trucks, Inc., a Mobile uck dealer, each of which does a gross annual retail busiss in excess of $500,000 and makes purchases annually tside of Alabama valued in excess of $50,000.

9. No other cases are pending with regard to the instant spute.

B. In its answer to the petition for Advisory Opinion, e primary Employer alleges, in pertinent part, as follws:

1. The Employer admits that the Petitioner is a labor rganization within the meaning of the Act. It affirmatively leges that the Petitioner is a dominated labor organizaon—dominated by the supervisors of radio and television ations in the Mobile area.

2. The Employer is without knowledge whether Petiioner's members have personally contacted 12 advertisers Radio Station WLIQ or whether the Petitioner caused o separate letters to be mailed to all current or past dvertisers of Radio Station WLIQ. However, it affirmavely alleges that the Petitioner did send letters, other an those attached to the petition herein, to some of the mployer's advertisers and former advertisers.

3. The Employer denies the Peititioner's conclusion that e allegations of the bill for injunction set forth violations the Petitioner of Section 8(b)(4) and possibly 8(b)(1) d (2) of the Act. It also asserts that such allegations t forth violations of Alabama law—violations which are joinable under the rationale of the United States Sueme Court decision in *International Brotherhood of eamsters Local 695* v. *Vogt, Inc.*, 354 U. S. 284.

4. The Employer denies that the total revenue from adio Station WLIQ including trade-outs for broadcasting erations and piped-in background music, for the period nuary 21, 1961 through August 31, 1961, was in excess $30,000. It is without knowledge as to the commerce cts set forth in the petition for Advisory Opinion alleged th respect to secondary employers Delchamps, Inc., Bud-

[fol. 23] weiser Distributing Company, Johnson Chevrolet and Hots GMC Trucks, Inc.

5. The Employer affirmatively contends (1) that the dismissal of the petition for certification of representatives for failure of the primary Employer's operations to meet the Board's minimum standards is *res judicata* of the jurisdictional issue; (2) that the failure to appeal from the dismissal should have estopped the Petitioner from filing the petition for Advisory Opinion herein; (3) "that the Board cannot deprive an employer of the benefits of a certification, or of the benefits of an election wherein the union is not certified by declining to hold an election, and thus deprive the employer of the benefits of Sections 8(b)(7)(A), (B) and (C) and the employer's rights under Section 301 (a) and (b) of the National Labor Relations Act"; and (4) that the Board procedures for Advisory Opinions without a hearing deprive the Employer of due process. For the reasons hereinafter set forth, the Board finds no merit in these contentions.

On the basis of the above, the Board is of the opinion that:

1. The Employer is engaged in the operation of Radio Station WLIQ in Mobile, Alabama. The Board's standard for exercising jurisdiction over enterprises engaged in the operation of radio stations is a minimum gross volume of business of $100,000 pr annum. *Raritan Valley Broadcasting Co., Inc.*, 122 NL RB 90. On the facts submitted, the Employer's operations do not meet the Board's standard for asserting jurisdiction over radio stations.

2. Secondary employers Autry Greer & Sons, Inc., Delchamps, Inc., Budweiser Distributing Company, Johnson Chevrolet, Inc., and Hots GMC Trucks, Inc. are retail enterprises operating in Mobile, Alabama, each of which does a gross annual retail business in excess of $500,000 and makes annual purchases outside of Alabama in excess of $50,000. The Board's standards for exercising jurisdiction over a retail enterprise which satisfies its statutory or [fol. 24] legal jurisdiction is a gross volume of business of

at least $500,000 annually. *Carolina Supplies and Cement Co.*, 122 NL RB 88, 89. The out-of-state purchases, constituting direct inflow under the Board's decision in *Siemons Mailing Service*, 122 NL RB 81, bring each of the aforesaid secondary employers within the Board's statutory or legal jurisdiction. As the annual gross volume of business of each of the secondary employers exceeds $500,000, they each would meet the Board's jurisdictional standard for retail enterprises and the Board would assert jurisdiction over each of them.

3. In cases involving secondary activity by a union which may be violative of Section 8(b)(4) of the Act where, as here, the primary Employer's operations do not meet the Board's jurisdictional standards, the Board will take into consideration for jurisdictional purposes not only the operations of the primary Employer, but also the entire operation of the secondary employers at the location affected by the alleged conduct involved.[2] The dispute between the Petitioner and the primary Employer herein exists in Mobile and the Petitioner's activity with respect to the five secondary employers, mentioned in paragraph 2 above, occurred in Mobile. Mobile is thus the location affected by the Petitioner's secondary conduct. As indicated above secondary employers, Budweiser's Distributing Company, Johnson Chevrolet, Inc., and Hots GMC Trucks, Inc., are Mobile enterprises each of which meets the Board's jurisdictional standards and over each of whom the Board would assert jurisdiction.[3]

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[2] *Truck Drivers Local Union No. 649, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL; and Jamestown Builders Exchange, Inc.*, 93 NL RB 386; *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, General Drivers and Helpers Local No. 554, and Chauffeurs, Teamsters and Helpers Local No. 608, AFL; and McAllister Transfer, Inc.*, 110 NL RB 1769; *Madison Building & Construction Trades Council, (H & K Lathing Co.)*, 134 NL RB no. 43.

[3] In view of these circumstances, it is unnecessary to rely, for jurisdictional purposes, on the commerce data relating to the

[fol. 25] In these circumstances and in accord with established Board precedent, the Board would assert jurisdiction over the primary Employer and the secondary employers affected by the Petitioner's activities, whether or not such activities are in fact violative of Section 8(b)(4) of the Act.[4]

In view of the foregoing, the Board finds no merit in the primary Employer's contentions that the Petitioner's secondary activity may not be violative of Section 8(b)(4) of the Act; and that the Board's earlier declination of jurisdiction over the primary Employer's operations was *res judicata*, or should have estopped the Petitioner from filing the petition herein or that such declination deprived the primary Employer of the benefits of Section 8(b)(7) and 301(a) and (b) of the Act. Nor is there any merit to the contention that the Board's Advisory Opinion procedures deprived the Employer of due process. By their very nature, such procedures do not contemplate holding a hearing as they were devised, merely to give advice to parties in a state proceeding and to the state court or agency before whom the proceeding may be pending as to whether, *on the facts submitted*, the Board would or would not assert jurisdiction.

Accordingly, the parties are therefore advised, under Section 102, 103 of the Board's Rules and Regulations, Series 8, that, on the facts here present, the commerce operations of the primary Employer and those of the secondary employer at Mobile, Alabama, the location affected by the Petitioner's secondary conduct, are such that the Board

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Mobile operations of secondary employers, Autry Greer & Sons, Inc., and Delchamps, Inc., the extent of whose Mobile operations were not clearly set forth in the petition herein. See *Euclid Foods, Incorporated*, 118 NL RB 130.

[4] *Madison Building & Construction Trades Council, (H & K Lathing Co.), supra*, where at pg. 3, the Board stated: "The requirement that secondary employers be affected by the conduct involved does not mean that a violation must first be found. It is sufficient that conduct occurred that involved the secondary employer, which conduct must be considered and ruled upon as alleged violations."

[fol. 26] would assert jurisdiction with respect to labor disputes cognizable under Section 8 or 10 of the Act.

Dated, Washington, D C., Jan. 19, 1962.

Frank W. McCulloch, Chairman; Boyd Leedom, Member, John H. Fanning, Member, Gerald A. Brown, Member, National Labor Relations Board.

(Seal)

Filed, Sept. 10, 1962, W. Elsworth Haughton, Register.

Refiled—September 12, 1962 to Amended Bill, W. Elsworth Haughton, Register.

Refiled—April 10, 1963 to Bill as last amended, April 9, 1963, W. Elsworth Haughton, Register.

CERTIFICATE OF SERVICE (omitted in printing).

[fol. 27]

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

AMENDED BILL OF COMPLAINT—Filed September 10, 1962

To the Honorable Judges of the Circuit Court of Mobile County, Alabama, Sitting in Equity:

Comes the Complainant and shows unto your Honors on oath as follows:

1. Complainant, Broadcast Service of Mobile, Inc., is an Alabama corporation, and is engaged in the radio broadcast business in the City of Prichard, Mobile County, Alabama, and owns and operates Radio Station WSIM, Prichard, Alabama.

2. Local 1264 International Brotherhood of Electrical Workers, hereinafter called respondent union, is an unincorporated association and transacts business in Mobile County, Alabama.

3. A substantial number of the members of respondent union are residents of Mobile County, Alabama.

4. William Rayburn, David Fridge, and H. D. Smith are each over the age of twenty-one (21) years and are residents of Mobile County, Alabama.

5. Complainant is informed and believes and upon such information and belief alleges that William Rayburn, David Fridge and H. D. Smith are members of respondent union. H. D. Smith is Business Agent of respondent union.

6. Prior to August 1, 1962, complainant purchased certain assets of Radio Station WAIP, Prichard, Alabama.

7. On August 1, 1962, complainant commenced operations of Radio Station WSIM, Prichard, Alabama with a full complement of personnel including but not limited to a radio engineer.

8. On or about August 3, 1962, respondent union by and through its Business Agent H. D. Smith and member, David Fridge, demanded that complainant employ David Fridge as a radio engineer for Station WSIM and demanded complainant to recognize respondent union as the exclusive bargaining representative of complainant's employees.

[fol. 28] 9. On August 3, 1962, none of the employees of complainant had designated respondent union as his collective bargaining representative and none of the employees of the complainant desired to be represented for the purposes of collective bargaining by respondent union.

10. On or about August 6, 1962, respondent union again demanded that complainant enter into a collective bargaining agreement with respondent union although none of the employees of complainant had designated respondent union as his collective bargaining representative and none of the employees of the complainant desired to be represented for the purposes of collective bargaining by respondent union.

11. Respondent union did not on August 6, 1962, contend that any employee of complainant had designated respondent union as his collective bargaining representative.

12. Complainant has at all times refused to recognize respondent union as the collective bargaining representative of complainant's employees.

13. Complainant has at all times refused to terminate any of its employees in order to employ David Fridge pursuant to the demands by respondent union.

14. On Friday, August 10, 1962, respondent union began picketing complainant's office located at 74 main street, Prichard, Alabama.

15. Respondent union has picketed complainant's office periodically since August 10, 1962.

16. None of the persons who have picketed the complainant are or have ever been employees of the complainant.

17. Complainant is informed and believes and upon such information and belief states as a fact that none of complainant's employees are or have ever been members of respondent union and none of complainant's employees desire respondent union to represent him.

18. Respondent since August 10, 1962, has by picketing, letters addressed to persons, firms and corporations and by personal contact sought to effect a boycott of Complainant and to cause persons doing business with or desiring to do business with complainant to cease doing business [fol. 29] with complainant or to refrain from doing business with complainant.

19. Subsequent to August 10, 1962, respondent union caused to be mailed a letter, a copy of which is attached hereto marked Exhibit A and made a part hereof, to a substantial number of merchants in the Mobile-Prichard, Alabama, area. Respondent union by and through respondent David Fridge and others has since on or about August 10, 1962, personally contacted customers of complainant and induced said customers to cease doing business with and to cancel advertising agreements with complainant.

20. Respondents William Rayburn, David Fridge and H. D. Smith have participated in the acts of the respondent union set forth hereinabove.

21. Complainant is informed and believes and upon such information and belief states as a fact that an object of the

aforesaid picketing, and boycotting and attempts to cause a boycott is to force and require complainant to bargain with respondent union although the respondent union has not been selected by any of complainant's employees for the purpose of collective bargaining.

22. Complainant is informed and believes and upon such information and belief states as a fact that an object of the aforesaid picketing, boycotting and attempts to boycott is to force complainant to violate the Alabama Right To Work Act.

23. Complainant is informed and believes and upon such information and belief states as a fact that an object of the aforesaid picketing, boycotting and attempts to boycott is to force or require complainant's employees to join the respondent union and to designate respondent union for the purpose of collective bargaining.

24. Complainant is informed and believes and upon such information and belief states as a fact that an object of the aforesaid picketing, boycotting and attempts to boycott is to force or require complainant to employ members of respondent union.

25. Complainant is informed and believes and upon such information and belief states as a fact that an object of the [fol. 30] aforesaid picketing, boycotting and attempts to boycott is to ruin the business of complainant.

26. Complainant is informed and believes and upon such information and belief states as a fact that an object of the aforesaid picketing, boycotting and attempts to boycott is to cause complainant's customers to cease doing business with complainant.

27. Complainant is informed and believes and upon such information and belief states as a fact that an object of the aforesaid picketing, boycotting and attempts to boycott is to force or require persons advertising over complainant's Radio Station WSIM to breach their advertising contracts with complainant.

28. The activities of the respondents set forth hereinabove have caused a curtailment of complainant's business,

have caused advertisers to cancel advertising with complainant, have caused prospective advertisers to fail and refuse to place advertising with complainant, and are causing irreparable damage to complainant, and complainant will be further irreparably damaged by having its business interrupted unless the respondents and all persons in active concert and participation with them cease picketing, boycotting and inducing others to boycott complainant.

29. Complainant has no adequate remedy at law for respondents' acts as set forth hereinabove.

30. Unless respondents' picketing, boycotting and attempts to boycott are restrained as hereinafter provided, complainant will suffer irreparable injury.

Prayer for Process

Wherefore, complainant prays that respondents Local 1264 International Brotherhood of Electrical Workers, William Rayburn, David Fridge and H. D. Smith be made party respondents to this bill of complaint and be required to plead, answer or demur to the same as required by law.

Prayer for Relief

Complainant further prays that immediately upon the filing of this Amended Bill of Complaint and upon entering into sufficient bond as may be approved by Your Honors, Your Honors will issue a temporary injunction [fol. 31] restraining and enjoining Local 1264 International Brotherhood of Electrical Workers, an unincorporated association, its officers, agents, servants, pickets, members and employees, and William Rayburn, David Fridge and H. D. Smith, and all persons in active concert and participation with them from:

(a) Picketing in front of or in the vicinity of complainant's offices and transmitter located in Prichard, Alabama;

(b) Causing or attempting to cause persons doing business with or persons desiring to do business with complainant to cease or refrain from doing business with complainant;

(c) Inducing any person that is a party to an agreement with complainant to breach said agreement;

(d) In any manner conspiring, campaigning, confederating, agreeing and arranging with any person to interfere with, hinder or annoy any person who may desire to do business with complainant, and upon hearing of this cause the said temporary injunction be made permanent and the Court will ascertain and award damages in the amount of TWENTY FIVE THOUSAND AND NO/100ths ($25,000.00) DOLLARS to complainant for the acts of the respondents described hereinabove. Complainant prays for such other, further and different relief as it may be entitled to receive the premises considered.

Respectfully submitted,

Stone and Howard, By Ralph O. Howard, Attorneys for Complainant.

Of Counsel: Willis C. Darby, Jr.

Duly sworn to by John H. Hale, jurat omitted in printing.

[fol. 32] CLERK'S NOTE:

EXHIBIT "A" TO AMENDED BILL OF COMPLAINT—Letter to advertisers has been omitted from the record here. Please see side folio 12, printed page 11.

[fol. 33] [File endorsement omitted]

[fol. 35]

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA.

IN EQUITY

No. 58,568

Judge Joseph M. Hocklander

BROADCAST SERVICE OF MOBILE, INC., Complainant,

vs.

LOCAL 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AND WILLIAM RAYBURN, DAVID FRIDGE AND H. D. SMITH, Respondents.

COURT REPORTER'S TRANSCRIPT—September 10th, 1962

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APPEARANCES

For Complainant: Honorables Willis Darby & Ralph Howard, Attorneys at Law, Mobile, Alabama.

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For Respondents: Honorables Morgan Stanford, Attorney at Law, Atlanta, Georgia, and Honorable Pierre Pelham, Attorney at Law, Mobile, Alabama.

The Court: I am going to rule that the Court does have jurisdiction in this cause. I am going to give you an opportunity to file briefs, and when you file your briefs, if you persuade me I was wrong on this point, I will have an opportunity to correct it on the Petition itself, but I want to rule now to expedite the matter.

Mr. Darby: If the Court please, while we are waiting, I can go ahead and file my affidavits and also the amended bill of complaint.

The Court: Alright, go ahead. It is your purpose to present those affidavits, and we will then hear such evidence

as the respondents care to put on, and then I will recess the hearing and give you an opportunity to file briefs.

Mr. Darby: We would request this, based on our brief we filed with the Court, that Your Honor would grant the temporary injunction at the conclusion of this hearing, and—

The Court: I will give the gentlemen representing the Respondents an opportunity to provide me with a brief.

OFFERS IN EVIDENCE

Mr. Darby: We wish to offer in evidence on behalf of the Complainant, the following exhibits; the amended bill of complaint, the affidavits of Clenton E. Bryan, Donald [fol. 36] E. Givens, Keith Glatzer, John H. Hale, Carolyn T. Hill, Stanley Lightsey, an affidavit signed by Carolyn T. Hill, Keith Glatzer, Donald R. Givens, James M. Carlisle and James L. Colley. One other thing I would like to introduce in evidence and rely on, Your Honor, is Exhibit 1, and the attachments thereto, of the Plea to the Jurisdiction, filed by the Respondents herein. That Exhibit shows the advertisers to whom they allege they have written letters to and the ones they allegedly called upon, and with that, we rest on our presentation for a temporary injunction.

(Note: The above exhibits introduced into evidence by the Complainants were marked by the Court Reporter as Complainant's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9A, 9B, 9C and 9D, respectively.)

CLERK'S NOTE:

COMPLAINANT'S EXHIBIT No. 1—Amended Bill of Complaint and Exhibit "A" thereto—Letter to Advertisers have been omitted from the record here. Please see side folio 27 printed page 25 and side folio 12, printed page 11.

[fol. 42]

COMPLAINANT'S EXHIBIT NO. 2

IN THE CIRCUIT COURT OF MOBILE COUNTY

ALABAMA

IN EQUITY

No. 58,568-H.

BROADCAST SERVICE OF MOBILE, INC., Complainant,

vs.

LOCAL 1264 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AND WILLIAM RAYBURN, DAVID FRIDGE AND H. D. SMITH, Respondents.

STATE OF ALABAMA
COUNTY OF MOBILE

AFFIDAVIT OF CLENTON E. BRYAN

I, Clenton E. Bryan, first being duly sworn do hereby depose and say:

1. I am employed by Broadcast Service of Mobile, Inc., as a radio engineer. I am the only radio engineer employed by Broadcast Service of Mobile, Inc. I work at the Company's office which is located at 74 Main Street, Prichard, Alabama, and also at the Company's transmitter which is also located in Prichard, Alabama, but at a different location from the office. I have been employed by Broadcast Service of Mobile, Inc., in my present capacity since August 7, 1962. I was originally employed to come to Mobile and work for Station WSIM on a two week trial basis. My trial period is now over and according to my understanding I am now a regular employee. I have intended moving my family to Mobile and buying a home but I have not done so because of the I.B.E.W. picket line.

2. I am not, nor have I ever been a member of Local 1264 International Brotherhood of Electrical Workers nor

am I a member of any organization affiliated with Local 1264. I do not and I have never desired or selected Local 1264 International Brotherhood of Electrical Workers to represent me for the purposes of collective bargaining with my employer, Broadcast Service of Mobile, Inc.

3. Shortly after I commenced working for Broadcast Service of Mobile, Inc., Local 1264 International Brotherhood of Electrical Workers placed a picket line about the premises of Broadcast Service of Mobile, Inc. Neither any of the pickets nor any other person has at any time re-
[fol. 43] quested me to join Local 1264 International Brotherhood of Electrical Workers.

I have read the foregoing affidavit and swear that it is true and correct.

/s/ Clenton E. Bryan

Subscribed and sworn to before me this 7th day of September, 1962.

/s/ Willis C. Darby, Jr.
Notary Public, State of Alabama at Large.

COMPLAINANT'S EXHIBIT No. 3.

IN THE CIRCUIT COURT OF MOBILE COUNTY
ALABAMA

IN EQUITY

No. 58,568-H.

BROADCAST SERVICE OF MOBILE, INC., Complainant,

vs.

LOCAL 1264 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AND WILLIAM RAYBURN, DAVID FRIDGE AND H. D. SMITH, Respondents.

STATE OF ALABAMA
COUNTY OF MOBILE

AFFIDAVIT OF DONALD R. GIVENS

Donald R. Givens first being duly sworn hereby deposes and says:

1. I am employed by Broadcast Service of Mobile, Inc., as a salesman.

2. I have seen the letter signed by H. D. Smith, Business Agent, L.U. 1264, I.B.E.W., AFL-CIO, directed to all merchants of the Mobile-Prichard area.

3. On or about Thursday August 30, 1962, Casey A. Adams, owner of Adams Furniture and Appliance Supermarket and I had a conversation pertaining to the I.B.E.W. and its campaign against Radio Station WSIM. Mr. Adams told me that he had received a letter from the I.B.E.W. and also that some representatives of I.B.E.W. had called on him at his store. Mr. Adams told me that he was going to have to cancel his advertising schedule over Station WSIM. It is my understanding that Adams Furniture and Appliance Supermarket currently has a thirteen week schedule of advertising over Station WSIM.

4. On or about Thursday August 30, 1962, WSIM's station Manager, John Hale, had a conversation with Emanuel Criminale, Advertising Director, for Green-Lincoln-Mercury of Mobile, Alabama, about Green-Lincoln-[fol. 44] Mercury advertising over Station WSIM. Mr. Hale and I explained the benefits of advertising over WSIM to Mr. Criminale. After we had discussed this subject with him for some time Mr. Criminale told us that he had just about decided to buy a particular promotion with WSIM but since WSIM had union trouble that he could not consider running any advertising with us because he could not light a powder keg in his own organization. Mr. Criminale told us that when we had our union problems settled for us to come back and talk with him.

I have read the foregoing affidavit and swear that it is true and correct.

/s/ Donald R. Givens

Subscribed and sworn to before me this 7th day of September, 1962.

/s/ Willis C. Darby, Jr.
Notary Public, State of Alabama at Large.

COMPLAINANT'S EXHIBIT No. 4.

IN THE CIRCUIT COURT OF MOBILE COUNTY
ALABAMA

IN EQUITY

No. 58,568-H.

BROADCAST SERVICE OF MOBILE, INC., Complainant,

vs.

LOCAL 1264 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AND WILLIAM RAYBURN, DAVID FRIDGE AND H. D. SMITH, Respondents.

STATE OF ALABAMA, COUNTY OF MOBILE)

AFFIDAVIT OF KEITH GLATZER

Keith Glatzer first being duly sworn hereby deposes and says:

1. I am employed by Broadcast Service of Mobile, Inc., as an announcer. I anounce over Radio Station WSIM. I work at the Company's office which is located at 74 Main Street, Prichard, Alabama.

2. On or about August 31, 1962, I saw David Fridge and a person whom I do not know in the Coffee Cup Restaurant. The Coffee Cup Restaurant is next door to the building in which Broadcast Service of Mobile, Inc., is located. On several occasions prior to August 31, 1962, I had seen David Fridge in the company of persons who were carrying an I.B.E.W. picket sign in front of the office of Broadcast Service of Mobile, Inc.

3. I asked Dave Fridge whether the letter which the [fol. 45] I.B.E.W. had been sending to merchants in the Mobile-Prichard area was in his opinion something that was legal or whether it constituted a secondary boycott. Fridge told me that it was perfectly legal, that as a matter

of fact his union had helped write the law to make it legal. Fridge told me that it was the union's purpose to contct every advertiser of WSIM and that his union was so well known that in most cases all it took was a letter to get the advertiser to stop using the services of the Station. Fridge told me that the union's campaign with WSIM's advertisers and their picket line would eventually compel WSIM to sign a contract with the I.B.E.W. because if they did not WSIM would not have any advertisers.

I have read the foregoing affidavit and swear that it is true and correct.

/s/ KEITH GLATZER

Subscribed and sworn to before me this 7th day of September, 1962.

/s/ WILLIS C. DARBY, JR.
Notary Public, State of Alabama at Large.

COMPLAINANT'S EXHIBIT NO. 5.

IN THE CIRCUIT COURT OF MOBILE COUNTY

ALABAMA

IN EQUITY

No. 58,568-H.

BROADCAST SERVICE OF MOBILE, INC., Complainant,

vs.

LOCAL 1264 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AND WILLIAM RAYBURN, DAVID FRIDGE AND H. D. SMITH, Respondents.

STATE OF ALABAMA)
COUNTY OF MOBILE)

AFFIDAVIT OF JOHN H. HALE

I, John H. Hale, first being duly sworn do hereby depose and say:

1. I am and have been since August 1, 1962 Manager of Broadcast Service of Mobile, Inc., operators of Radio Station WSIM, Prichard, Alabama.

2. I am informed and believe and upon such information and belief state that D[illegible]id Fridge who had been employed by Radio Station WAIP, Prichard, Alabama, as Chief Engineer, had been terminated by Radio Station WAIP, Prichard, Alabama, effective July 31, 1962. A copy of a release executed by Mr. Fridge is attached hereto and [fol. 46] made a part hereof, marked Exhibit A.

3. In the opinion of the management of Radio Station WSIM not more than one full time forty hour week engineer is needed to operate and maintain the Station.

4. WSIM commenced broadcast operations on August 1, 1962. Walter Stevenson, an employee of an affiliated company, WHHY, Montgomery, Alabama, temporarily served as engineer. Mr. Stevenson was replaced by Mr. Clenton E. Bryan on or about August 7, 1962. Mr. Bryan has successfully served a two weeks probationary employment with the Station and is performing his work satisfactorily. I have no present intention of terminating Mr. Bryan's services and replacing him with any other engineer.

5. Broadcast Service of Mobile, Inc. does not nor has it ever recognized any labor organization. I am informed and believe and upon such information and belief state as a fact that none of the employees of Broadcast Service of Mobile, Inc. have designated any labor organization to represent them or any of them for the purposes of collective bargaining or for any other purposes.

6. I am informed that Radio Station WAIP had a contract with Local 1264 International Brotherhood of Electrical Workers.

7. On or about August 3, 1962, David Fridge and H. D. Smith called on me at the office of WSIM located at 74 Main Street, Prichard, Alabama. David Fridge introduced H. D. Smith as Business Manager of Local 1264.

H. D. Smith told me that WSIM had a contract with Local 1264 and asked if we would acknowledge that fact.

I told Mr. Smith that I had no authority to discuss union matters with him but that I was of the opinion that WSIM did not have any contract with Local 1264. I further told Mr. Smith that he would have to take up the matter with the stockholders of the company. Mr. Smith informed me that he did not have to take the matter up with the officers or the stockholders, that he would talk to me about it. Mr. Smith then informed me that WSIM would have to employ David Fridge as its engineer and that as far as they, Local 1264, were concerned David Fridge was then on the pay roll. Mr. Smith told me that since Mr. Fridge was on our pay roll that we had just as well use him and he should stay at the station. I told Mr. Smith that Mr. Fridge was not our employee. I again told Mr. Smith and Fridge that I had no authority to discuss union matters with them.

[fol. 47] 8. On Monday or Tuesday, August 6 or 7, 1962, James Burns, who I understand is employed as Assistant Chief Engineer in charge of radio at Radio Station WALA, Mobile, Alabama, and H. D. Smith came to my office. Mr. Burns stated that the I.B.E.W. did not in fact have a contract with Station WSIM but that the I.B.E.W. did want Station WSIM to enter into a contract with the I.B.E.W. and Mr. Burns requested that I state whether or not Station WSIM would recognize Local 1264 as the collective bargaining representative of our employees. Mr. Burns did not claim to represent any of the employees of Station WSIM. Mr. Burns further stated that Station WSIM might be able to get around employing David Fridge. I again informed the representatives of Local 1264 that I had no authority to deal with them on union matters. They left.

9. On or about August 9, 1962 Mr. Burns and Mr. Smith called on me at the downtown sales office of Station WSIM located in the Van Antwerp Building in Mobile, Alabama. I again informed these union representatives that I had no authority to discuss union matters with them.

10. The following persons are all of the employees of Radio Station WSIM in Prichard, Alabama: Carolyn T. Hill, Keith Glatzer, Donald R. Givens, James M. Carlisle, James L. Colley and Clenton E. Bryan.

11. On Friday August 10, 1962, Local 1264 commenced picketing the offices of Station WSIM in Prichard, Alabama.

12. Picketing has continued intermittently since August 10, 1962. Among others I recognized H. D. Smith, David Fridge and James Burns.

13. Several days after the picketing commenced on August 10, 1962, Local 1264 mailed a letter "To All Merchants of the Mobile-Prichard Area", a copy of which is attached hereto marked Exhibit B and made a part hereof. Immediately thereafter a number of persons who had advertised over Radio Station WSIM terminated their advertising schedules or failed to renew them.

13. On or about Thursday August 30, 1962, I and our Salesman, Donald R. Givens had a conversation with Emanuel Criminale, Advertising Director, for Green Lincoln-Mercury of Mobile, Alabama, about Green Lincoln-Mercury advertising over Station WSIM. Mr. Givens and I explained the benefits of advertising over WSIM to Mr. Criminale. After we had discussed this subject with him [fol. 48] for some time Mr. Criminale told us that he had just about decided to buy a particular promotion with WSIM but since WSIM had union trouble that he could not consider running any advertising with us because he could not light a powder keg in his own organization. Mr. Criminale told us that when we had our union problems settled for us to come back and talk to him.

14. The picketing and boy otting of Local 1264 has caused and is continuing to cause Station WSIM to lose a substantial amount of advertising revenue. There is no way that I can accurately ascertain the amount of revenue being lost by Station WSIM due to the picketing and boycotting of Local 1264. I do know that Station WSIM has lost a substantial amount of advertising due to the boycotting and picketing and that numerous advertisers and prospective advertisers inform our salesman and other employees of Station WSIM that they will not advertise over Station WSIM while the union is picketing and attempting to boycott Station WSIM.

I have read the foregoing affidavit and swear that it is true and correct.

/s/ JAMES H. HALE

Subscribed and sworn to before me this 10th day of September, 1962.

/s/ WILLIS C. DARBY, JR.
NOTARY PUBLIC, STATE OF ALABAMA AT LARGE.

EXHIBIT A TO COMPLAINANT'S EXHIBIT No. 5

STATE OF ALABAMA)
COUNTY OF MOBILE)

Robt DSF

One Thousand and five and 45/100

In consideration of the sum of ~~SIX HUNDRED SEV-~~ 1005.45, after deduction for taxes,
~~ENTY FIVE~~ & ~~70/100 $675.70~~ Dollars in hand paid by PRICHARD BROADCASTING COMPANY, INC., receipt of which is hereby acknowledged, and other good and valuable consideration, the undersigned does hereby release PRICHARD BROADCASTING COMPANY, INC. from any and all claims and demands of any kind whatsoever to the date hereof, and particularly from any claims or demands for salary, commission or other compensation under any employment or contract of employment.

Dated this 21 day of August, 1962.

/s/ DAVID S. FRIDGE, JR. (SEAL)
David Fridge

STATE OF ALABAMA)
COUNTY OF MOBILE)

I, Ralph O. Howard, a Notary Public in and for said County and State, do hereby certify that David Fridge [fol. 49] whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument,

he executed the same voluntarily on the day the same bears date.

Given under my hand, this 21 day of August, 1962.

/s/ Ralph Howard
Notary Public Mobile County, Alabama.

/s/ David S. Fridge, Jr.
David Fridge.

Complainant's Exhibit No. 6

In the Circuit Court of Mobile County
Alabama
In Equity
No. 58,568-H.

Broadcast Service of Mobile, Inc.,
Complainant,

vs.

Local 1264 International Brotherhood of Electrical Workers, and William Rayburn, David Fridge and H. D. Smith,
Respondents.

State of Alabama
County of Mobile

Affidavit of Carolyn T. Hill

Carolyn T. Hill first being duly sworn hereby deposes and says:

1. I am employed by Broadcast Service of Mobile, Inc. as a secretary. I work at the Company's office which is 74 Main Street, Prichard, Alabama.

2. On or about August 15, 1962, Mr. Thompson of Cochran Furniture Company, Prichard, Alabama, called me on the telephone and told me that he wanted to cancel his advertising over Station WSIM. I asked Mr. Thompson why and he said that he had received a letter from the I.B.E.W. Mr. Thompson then read the letter to me over the telephone. I am acquainted with the letter which he read which is addressed to all merchants in the Mobile-Prichard area and signed by H. D. Smith, Business Agent, L. U. 1264, I.B.E.W., AFL-CIO. After reading the letter Mr. Thompson told me that he would come back and advertise over Station WSIM after the difficulties with I.B.E.W. were settled. Cochran Furniture Company had been running three spots a day which would run approximately $200.00 a month.

3. On or about August 27, 1962, I received a call from Mr. Bobo of Baxter's Clothing Store located in Prichard, Alabama. Mr. Bobo referred to the I.B.E.W. and said that [fol. 50] he was under too much pressure and that he would have to cancel his advertising. Mr. Bobo told me that he would come back on Station WSIM when the difficulty with the I.B.E.W. was settled. Baxter's was advertising four spots a day, five days a week on and prior to August 27, 1962.

4. On or about August 31, 1962, I saw David Fridge and Douglas Rayburn in front of the office of Broadcast Service of Mobile, Inc. David Fridge told me that he had just come from calling on some of Radio Station WSIM's advertisers. Fridge further told me that he had been talking to the advertisers trying to get them to stop advertising over Radio Station WSIM.

I have read the foregoing affidavit and swear that it is true and correct.

/s/ Carolyn T. Hill

Subscribed and sworn to before me this 7th day of September, 1962.

/s/ Willis C. Darby, Jr.
Notary Public, State of Alabama at Large.

COMPLAINANT'S EXHIBIT No. 7

IN THE CIRCUIT COURT OF MOBILE COUNTY

ALABAMA

IN EQUITY

No. 58,568-H.

BROADCAST SERVICE OF MOBILE, INC.,

Complainant,

vs.

LOCAL 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AND WILLIAM RAYBURN, DAVID FRIDGE AND H. D. SMITH,

Respondents.

STATE OF ALABAMA
COUNTY OF MOBILE

AFFIDAVIT OF STANLEY LIGHTSEY

I, Stanley Lightsey, first being duly sworn do hereby depose and say:

1. I am the Treasurer of Broadcast Service of Mobile, Inc.

2. On or about Friday August 17, 1962, I met with H. D. Smith and James Burns of Local 1264 at the law offices of Stone and Howard, Mobile, Alabama. The representatives of Local 1264, I.B.E.W. demanded that David Fridge be employed as Chief Engineer at Radio Station WSIM and that WSIM recognize Local 1264 as the collective bargaining representative of WSIM's engineering employees. Neither of the representatives of Local 1264 contended or claimed that any employee of WSIM was a member of Local 1264 or that any employee of Station WSIM had authorized Local 1264 to represent him for the [fol. 51] purposes of collective bargaining. The representatives of Local 1264 acknowledged that Local 1264 had

caused a letter addressed "To all Merchants of the Mobile-Prichard Area" to be mailed.

I have read the foregoing affidavit and swear that it is true and correct.

/s/ STANLEY LIGHTSEY

Subscribed and sworn to before me thi ..... day of ....., 1962.

.....

NOTARY PUBLIC, MOBILE COUNTY, ALABAMA.

COMPLAINANT'S EXHIBIT NO. 8

STATE OF ALABAMA
COUNTY OF MOBILE

AFFIDAVIT

Personally appeared before me, the undersigned authority, a Notary Public duly commissioned and qualified, there came and appeared the undersigned, who, being first duly sworn did depose and say:

I am an employee of Broadcast Service of Mobile, Inc. operators of Radio Station WSIM.

I am not, nor have I ever been, a member of Local 1264 International Brotherhood of Electrical Workers, or any organization affiliated with said Union. I have never desired or selected Local 1264 International Brotherhood of Electrical Workers to represent me for the purposes of collective bargaining with my employer.

I have read the foregoing statement and swear that it is true and correct.

/s/ CAROLYN T. HILL
KEITH GLATZER
JAMES M. CARLISLE
JAMES L. COLLEY
DONALD R. GIVENS

Subscribed and sworn to before me this 7th day of September, 1962.

/s/ WILLIS C. DARBY, JR.
NOTARY PUBLIC,

Mr. Darby: One other thing I would like to rely on, Your Honor, is this Exhibit 1 and the attachments thereto of the Plea to the Jurisdiction, filed by the Respondents herein. That Exhibit shows the Advertisers to whom they allege they have written letters, and the ones they allegedly called on the phone, and with that, we rest our presentation for a temporary injunction.

[fol. 52]

CLERK'S NOTE:

COMPLAINANT'S EXHIBIT No. 9-A—List of WSIM advertisers has been omitted from the record here. Please see side folio 11, printed page 9.

[fol. 53]

CLERK'S NOTE:

COMPLAINANT'S EXHIBIT No. 9-B—Letter to advertisers has been omitted from the record here. Please see side folio 12, printed page 11.

[fol. 54]

CLERK'S NOTE:

COMPLAINANT'S EXHIBITS No. 9-C and 9-D—Petition for Advisory Opinion and Advisory Opinion of National Labor Relations Board have been omitted from the record here. Please see side folio 13, printed page 12 and side folio 19, printed page 18.

[fol. 67] Mr. Stanford: We ask for time to meet these affidavits, as stated, since we were only served in the last few days and I would like a little time to file a brief with Your Honor on this very important question of jurisdiction. I think that if we would have an opportunity to file a brief, setting forth the facts in these cases here the Court would have time to study it over. I think the Court would agree with our position, it is a matter pre-empted by Federal laws and we request a period of time to do that. If Your Honor could give us a couple of weeks to get a brief in—

The Court: I would be willing to give you a couple of days—

(Further discussion between Court and Attorneys on points of law.)

The Court: When was this served on the Respondents?

Mr. Stanford: I think it was about the 7th or 8th. I got it on the 7th of September.

(Further discussion between Court and Attorneys on points of law.)

The Court: I will recess the hearing until 11 o'clock Wednesday morning. Now I trust you are going to file whatever evidence you intend to file by way of affidavits.

Mr. Stanford: Yes sir, I will *them* them out.

The Court: I would like to have that, if I may, by 9 o'clock Wednesday Morning,—I would like to have it all, if I may, by 9 o'clock Wednesday Morning.

Mr. Darby: Does that also include my briefs, Your Honor, that are subject to be filed?

The Court: I would like to have everything that you are going to give me by 9 o'clock Wednesday morning, prior to that, if possible, but by 9 o'clock at the latest.

WEDNESDAY MORNING, SEPTEMBER 12, 1962.

NOTE: The following affidavits were marked into evidence by the Court Reporter for the respective parties herein.

COMPLAINANT'S EXHIBIT NO. 10

IN THE CIRCUIT COURT OF MOBILE COUNTY

ALABAMA

IN EQUITY

No. 58,568-H.

BROADCAST SERVICE OF MOBILE, INC.,

Complainant,

vs.

LOCAL 1264 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, and WILLIAM RAYBURN, DAVID FRIDGE and H. D. SMITH,

Respondents.

[fol. 68]

STATE OF ALABAMA
COUNTY OF MOBILE

SUPPLEMENTAL AFFIDAVIT OF JOHN H. HALE

I, John H. Hale, first being duly sworn do hereby depose and say:

1. I am and have been since August 1, 1962, Manager of Broadcast Service of Mobile, Inc., operators of Radio Station WSIM, Prichard, Alabama.

2. The gross receipts of Broadcast Service of Mobile, Inc. projected on an annual basis are less than FORTY THOUSAND AND No/100THS ($40,000.00) DOLLARS per annum.

I have read the foregoing affidavit and swear that it is true and correct.

s/s JOHN H. HALE j

Subscribed and sworn to before me this 12 day of September, 1962,

/s/ WILLIS C. DARBY, JR.
NOTARY PUBLIC,
STATE OF ALABAMA AT LARGE.

COMPLAINANT'S EXHIBIT No. 11

IN THE CIRCUIT COURT OF MOBILE COUNTY

ALABAMA

IN EQUITY

No. 58,568-H.

BROADCAST SERVICE OF MOBILE, INC.,

Complainant,

vs.

LOCAL 1264 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, and WILLIAM RAYBURN, DAVID FRIDGE and H. D. SMITH,

Respondents.

STATE OF ALABAMA
COUNTY OF MOBILE

SUPPLEMENTAL AFFIDAVIT OF JOHN H. HALE

I, John H. Hale, being first duly sworn do hereby depose and say:

1. I am and have been since August 1, 1962, Manager of Broadcast Service of Mobile, Inc., operators of Radio Station WSIM, Prichard, Alabama.

2. The gross receipts of Broadcast Service of Mobile, Inc., projected on an annual basis are less than FORTY THOUSAND AND NO/100THS ($40,000.00) DOLLARS per annum.

3. David Fridge was not employed by Broadcast Service of Mobile, Inc., because of the state of the equipment of Radio Station WAIP. I am informed and believe that David [fol. 69] Fridge was the Chief Engineer for Radio Station WAIP. My inspection of the physical technical equipment of Radio Station WAIP revealed that it was dirty, not in proper technical working order, much of the equipment was in such a deplorable state that it would not function and what would function functioned with poor quality,

and wires were strung across the room and around the floor. I have been in many radio Stations and I have never seen technical equipment in such obvious disrepair.

/s/ JOHN H. HALE

Subscribed and sworn to before me this 12th day of September, 1962.

/s/ WILLIS C. DABBY, JR.
NOTARY PUBLIC,
STATE OF ALABAMA AT LARGE.

RESPONDENTS' EXHIBIT NO. A

CIRCUIT COURT OF MOBILE COUNTY

ALABAMA

IN EQUITY

No. 58,568-H.

BROADCAST SERVICE OF MOBILE, INC.,

Complainant,

vs.

LOCAL 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, ET AL.

ALABAMA, MOBILE COUNTY

AFFIDAVIT OF JAMES C. BURNS

I, James C. Burns, residing at 2104 Highland Court, Mobile, Alabama, after first being duly sworn, do hereby depose and say:

I am a member of Local 1264, I.B.E.W. and am employed as assistant chief engineer for WALA in Mobile, Alabama. In the past I have served as Business Agent of Local 1264. At the present time Local 1264 consists of twenty-three members.

On August 6, 1962, Local 1264 Business Agent Smith asked me to go with him over to see Hale, Manager of WSIM. We met with Hale at the Mobile office of WSIM. Hale started the conversation by apologizing to Smith for not calling him as promised but he explained he had not been able to get in touch with his boss, Robinson, at Station WHHY in Montgomery. I told Hale that we were entitled to know the status of Fridge because he was married and had six kids. Hale said he would call Bob Robinson, his boss in Montgomery, and let me talk with him.

Hale telephoned Robinson and after talking to him turned [fol. 70] the phone over to me. Robinson is general manager of Station WHHY in Montgomery and is one of three stockholders in the four Holt Broadcasting Service Stations.

I asked Robinson what was Fridge's status. Robinson told me that the Company had a man coming down to take over the technician's job temporarily for a two week period. Robinson went on to tell me that Cliff Shelkowsky was in the mind of the Company to fill the technicians' job at Station WSIM for Shelkowsky had asked the Company for some time ago for a job and the Company now wanted to hire him as chief engineer over all stations and let him be stationed in Mobile. Robinson said it had been a good while since Shelkowsky applied for work and that the best the Company knew now was that Shelkowsky was somewhere in Canada but the Company hadn't been able to locate him and this was the reason the Company was unable to hire Fridge.

Robinson in the conversation with me wanted to know if Union would go along with a one-man operation at WSIM and I told him I didn't know but would look into it. Robinson then told me that he understood the Union required WAIP to operate with two full-time technicians and one part-time technician. I told Robinson that this was not true for WAIP operated with one full-time technician and a part-time technician. Robinson then asked me what the base rate for technicians in the Mobile area was and I said $120.00 per week. I then asked Robinson if his Company intended to operate under union or non-union conditions at WSIM. Robinson said he wanted to get in touch

with his lawyer. I then told Robinson that Local 1264 wanted to know something. Robinson promised to send a letter so it would reach the Local by the next morning. The Local didn't receive any letter from Robinson the next day as he promised.

On Thursday, August 9, 1962, Local 1264 decided to put a picket line on Station WSIM and contact its advertisers because it was obvious through the delaying tactics of management of WSIM that the station would be operated under working conditions which were sub-standard and below the working conditions which Local 1264 has through many years and after hard struggle established at the union stations in Mobile.

On August 14, 1962, Business Agent Smith asked me to go with him to a meeting with John Howard, attorney for [fol. 71] the Company. Howard asked us to take down the picket line for thirty or sixty days and I told him that this on and off stuff only caused confusion and that the Company had seen fit to exercise its legal rights and operate under sub-standard working conditions which were threatening and undermining the working conditions at the union radio stations in Mobile and that we were simply exercising our legal rights to notify the public that WSIM was non-union.

It was evident that WSIM is operating below the standards which Local 1264 has established at radio stations which it has under contract in view of the fact that WSIM is only operating with one technician and I understand his hours are from 4 A. M. until sundown, seven days per week. Also that he is subject to call back at all times. For the responsibility that the one-man technician has at WSIM, he would be making $145.00 per week under our union contracts. Also our union contracts call for a standard work week of five days, eight hours per day, and with two consecutive days off each week. Also six paid holidays and double time pay for work done on a holiday, no split shifts, seniority protection, and minimum of three hours work guaranteed on all call back work at 1½ time regular rate.

On August 17, 1962, Business Manager Smith again asked me to go to a meeting with Attorney Howard. At Howard's

office was a man who introduced himself as Stan Lightsey and stated that he was comptroller of the Holt Broadcasting Service stations and that he was from Hattiesburg, Mississippi. Lightsey explained that Holt Broadcasting Service consisted of Stations WSIM, WHSY WHNY and WHHY.

Lightsey began the conversation by stating that he wanted to talk to us about negotiating a contract. I told Lightsey we were not able to talk to him about negotiating a contract because the Company had not recognized Local 1264 and the Local did not represent the employees of WSIM.

Lightsey then asked why we were picketing and I told him we were picketing to protect the good working conditions and standards at the stations in Mobile where we have contracts from the sub-standard working conditions at WSIM.

I understand from Thomas S. Adair, our attorney in Atlanta, that Charles W. Holt, President of WSIM and head of the Holt Broadcasting Service stations, that Holt called [fol. 72] Adair long distance in Atlanta to talk with him about activities of Local 1264.

John Hale, Manager of Station WSIM, on September 10, 1962 told me that Stations WSIM, WHSY in Hattiesburg, WHNY in McComb Mississippi, and WHHY in Montgomery are all commonly owned and the stock in the stations is held solely by Charles W. Holt and his wife, Connie I. Holt, and Robert N. Robinson. Holt is President of WSIM and presumably the other three stations and he resides in Hattiesburg, Mississippi. The trade journal in the radio industry, known as "Broadcasting" in its July 30, 1962, issue shows that Charles W. Holt has majority interest in the above four radio stations.

I deny the statement on Page 3 of the affidavit of John H. Hale, which was submitted by Complainant, that on August 6, 1962, I told him that I wanted Station WSIM to enter into a contract with I.B.E.W. At no time have I told Hale that I wanted WSIM to enter into a contract with I.B.E.W.

Also John H. Hale stated on Page 3 of his affidavit that Smith and I met him again at the downtown sales office of Station WSIM in Mobile. No such meeting ever took

place for I never met with Hale but one time and this was with Smith on Monday, August 6, 1962.

I have read the above statement and swear that it is true and correct.

/s/ JAMES C. BURNS
James C. Burns

Subscribed and sworn to before me this 12th day of September, 1962.

/s/ ELEANOR SUE VARNER
NOTARY PUBLIC,
STATE OF ALABAMA.
(Notarial Seal Affixed)

RESPONDENTS' EXHIBIT NO. B

CIRCUIT COURT OF MOBILE COUNTY

ALABAMA

IN EQUITY.

No. 58,568-H.

BROADCAST SERVICE OF MOBILE, INC.,

Complainant,

VS.

LOCAL 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, ET AL.

ALABAMA, MOBILE COUNTY

AFFIDAVIT OF DAVID S. FRIDGE

I, David S. Fridge, after first being duly sworn, do hereby depose and say:

[fol. 73] I am thirty-two (32) years old, married and am the father of six children. I reside at 1354 East Gulf Field Drive, Mobile, Alabama. I am a member of Local 1264,

IBEW, and was formerly a member of Local's Executive Board. I began work in June, 1958, for Prichard Broadcasting Company which operated Radio station WAIP at Prichard, Alabama. I was employed as a radio technician and worked continuously in such capacity for Prichard Broadcasting Company until July 31, 1962, when it sold Station WAIP. Broadcast Service of Mobile, Inc. bought Station WAIP and its call letters were changed to WSIM.

I reported to work as usual on August 1, 1962, to perform my duties as a radio technician as I had not been told by Broadcast Service of Mobile, Inc. the new owner of the radio station, that I would not be needed as a radio technician.

Around 9:15 A. M. on August 1, 1962, I told John Hale, Station Manager of WSIM, that I was ready to work. Hale stated he didn't know whether I would be working or not. I then asked Hale if WSIM was not going to honor the labor contract with Local 1264, I.B.E.W. Hale then stated that he had no authority to say one way or the other but that he would like to talk to a representative of the Union.

I then reported to H. D. Smith, Business Manager of Local 1264, the conversation which I had with Hale. Business Manager Smith, M. C. Averett, a member of the Executive Board of Local 1264, and I on August 1, 1962, went to Station WSIM and arrived there about 10:15 A. M. After I introduced Smith and Averett to Hale, Smith inquired if I was working for WSIM. Station Manager Hale said he had no authority to say whether I was working or not but that we could talk to Bob Robinson, General Manager of Radio Station WHHY at Montgomery, Alabama. Hale explained to us that Bob Robinson was his immediate boss and that Charles W. Holt was the big boss, as he was the head of a group of four radio stations which included Station WSIM. Smith replied to Hale that since he was the manager of WSIM he should know whether Fridge was working or not.

Smith then showed Hale a small magazine clipping which stated that a United States Court had held that when a new company bought out an old company that the new company also acquired the union contract and that he (Smith) [fol. 74] was taking the position that the union contract

covered Station WSIM. Hale stated that he didn't understand it that way, but he didn't really know. Hale then stated that W. B. Stevenson, chief engineer from Station WHHY in Montgomery, Alabama, had been at the station in Prichard checking over the equipment, and that Stevenson had been impressed by Fridge and that Stevenson considered Fridge a competent engineer and that Hale would have no engineering difficulties as far as David Fridge was concerned. Hale then stated that he would personally like to see Fridge kept as chief engineer.

At this point Smith and Averett told Hale that he had no problem since he was satisfied with Fridge's work and Fridge wanted to work. Whereupon, Hale once more said he didn't have the authority to make such a decision.

Hale then said he didn't know but he understood the Union's contract called for two full-time technicians and one part-time technician to work at the station. We told Hale that this was wrong because WAIP operated with one full time technician and one part-time technician.

Hale then stated that the Holt Broadcasting Service was going to hire a consulting engineer for all four of the radio stations and let him be based in the Mobile area and in addition to being consulting engineer he would also work as chief engineer at WSIM.

The conversation with Hale ended with Hale stating that he would find out if WSIM was going to use Fridge and would let Business Manager Smith know something by closing time that afternoon.

From all indications I have seen it is evident that WSIM is operating under sub-standard working conditions compared to working conditions which exist in the Mobile area at Stations WABB, WTUF, WMOZ, WALA and WALA-TV, where the radio and television technicians are represented by Local 1264.

WSIM is operated with only one technician who is Clenton E. Bryan and whose hours are from 4 A. M. until sundown, seven days per week. Bryan is also subject to call at all hours. At no radio station represented by Local 1264 is there only one radio technician employed. Under the union contracts which Local 1264 has with radio stations [fol. 75] in the Mobile area, a radio technician called back

work after his regular scheduled work received a minimum of three hours call back time at 1½ pay; also in the contracts are six paid holidays, double time pay if work on a holiday, no split shifts are allowed, work a regular eight hour shift, five days per week, with two consecutive days off work, seniority protection, three weeks vacation after three years, and many other fringe benefits including hospitalization policies paid for by the employer and thirty days sick leave.

Picketing was started on August 10, 1962, and has continued along with contacting advertisers over Station WSIM encouraging their support of Local 1264, as a protest against the working conditions at WSIM which are below the union standards which Local 1264 has been able to obtain at other radio stations in the Mobile area after many years of hard and diligent collective bargaining. The working conditions at WSIM are a constant threat to the stable and harmonious collective bargaining and good working conditions which exist at the radio stations under contract with Local 1264 and the unfair advantage thus given to WSIM is calculated to undermine and destroy the high working standards which prevail at radio stations under contract with Local 1264.

One Keith Glatzer, who identifies himself as an announcer for Station WSIM, has given an affidavit which was submitted in evidence by the Complainant in this matter and relates to an alleged conversation which said Glatzer had with me. The version of said conversation as set forth by Glatzer is incorrect and I categorically deny that I told Glatzer that the Union's campaign with WSIM's advertisers and the picket line would eventually compel WSIM to sign a contract with I.B.E.W. because if they did not WSIM would not have any advertisers.

The correct version of the conversation I had with Keith Glatzer on August 31, 1962, is as follows:

Glatzer started the conversation by asking if the letter which Local 1264 had sent to advertisers of WSIM was legal. I told Glatzer that the letter was legal because we had conducted the same type campaign for eighteen months at Station WKRG in Mobile and it had been ruled by the National Labor Relations Board to be legal. Glatzer then

mentioned to me that Clenton Bryan, the radio technician [fol. 76] working at WSIM had made application and paid an initiation fee to a union and that he (Glatzer) didn't know what union. I told Glatzer that I didn't care what union Bryan belonged to for the picketing and other activities of Local 1264 were not for the purpose of organizing WSIM but was to protect our contracts and working conditions at other radio stations.

At the time I worked at Station WAIP in Prichard, I worked as a full-time technician and John Clouts worked as a part-time technician at WAIP.

Every day on the air WSIM announces that it is a member of Holt Broadcasting Service. The Holt Radio Stations consist of WSIM in Prichard, WHSY in Hattiesburg, and WHNY in McComb, Mississippi and WHHY in Montgomery. Charles W. Holt of Hattiesburg, Mississippi is shown in "Broadcasting", trade journal of the radio industry, as having controlling interest in all these stations.

I have read the above affidavit and swear that it is true and correct.

/s/ David S. Fridge
David S. Fridge

Subscribed and sworn to before me this 12th day of September, 1962.

Eleanor Sue Varner
Notary Public, State of Alabama.
(Notarial Seal Affixed)

RESPONDENTS' EXHIBIT No. C.

CIRCUIT COURT OF MOBILE COUNTY

ALABAMA

IN EQUITY

No. 58,568-H

BROADCAST SERVICE OF MOBILE, INC.,

Complainant,

vs.

LOCAL 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, ET AL.,

Respondents.

AFFIDAVIT OF H. D. SMITH

I, H. D. Smith, after first being duly sworn, do hereby depose and say:

I reside at 1315 Fulton Road, Mobile, Alabama. I work as a technician at Station WALA-TV in Mobile and am Business Agent of Radio Broadcast Technicians Local 1264, I.B.E.W. and have been a member of Local 1264 for nine years. Local 1264 represents the radio and television technicians at Stations WABB, WTUF, WMOZ, WALA and WALA-TV in the Mobile Area.

[fol. 77] On August 1, 1962 David S. Fridge, a member of Local 1264, called me and stated that John Hale, station manager of WSIM in Prichard, Alabama, wanted to talk with me. Broadcast Service of Mobile, Inc., had recently bought Station WAIP and changed the call letters to WSIM. Fridge advised me that the matter with Hale was concerning Fridge working for WSIM.

M. C. Averett, a member of the Executive Board of Local 1264, and I went to WSIM where Fridge introduced us to Station Manager John Hale. I asked wasn't Fridge now working for WSIM. Hale replied that he didn't know whether Fridge was working or not for he had no authority.

Hale then suggested that we talk to Bob Robinson, General Manager of Radio Station WHHY at Montgomery, Alabama, who was his boss. Hale went on to explain that there was a chain of four radio stations of which WSIM and the top boss over all four stations was Charles W. Holt.

I told Hale that he was manager of the station and he should know about whether Fridge was working or not. I then told Hale that I took the position that Broadcast Service of Mobile, Inc., when it bought Station WAIP, that the Company also was subject to the union contract which we had with WAIP. I had a magazine clipping which I showed Fridge and the clipping stated that a United States Court had held that when a company bought out the business of another company that the new company also acquired the union contract. Hale replied that he didn't believe that was so but that he really didn't know.

Hale then told us that W. B. Stevenson, chief engineer of Station WHHY in Montgomery, Alabama, which is one of a group of stations operated by Charles W. Holt, had been to Prichard looking over the station and that Stevenson had been impressed by Fridge's work and thought he was a competent engineer, and Stevenson had stated that station would have no engineering difficulties with Fridge around. Hale then stated that he personally would like to see Fridge kept on as chief engineer since he was familiar with the equipment.

I said to Hale that in view of his statement that it appeared there was no problem for he wanted Fridge and Fridge wanted to work. Hale again stated that he didn't have the authority to say whether or not Fridge was working.

[fol. 78] At this point Hale questioned us as to whether our union contract required two full-time technicians and a part-time technician. Hale was advised that this was not so because WAIP had operated with a full-time technician and one part-time technician.

Hale then told us that the Holt group of radio stations was going to hire a consulting engineer for all its stations and let him be based in the Mobile area where he could also work as Chief Engineer at WSIM.

Our conversation with Hale ended with Hale stating that he had no authority to make any decision as to Fridge but that he would talk to his boss Robinson at Station WHHY in Montgomery and would know something to tell me by closing time that afternoon.

Late on the afternoon of August 1, 1962, I telephoned Hale but Hale said that he still hadn't found out anything. I then told Hale that I would call him the next afternoon. I called several times on the afternoon of August 2nd trying to contact Hale and I left my telephone number at his office but I received no call from Hale. I then found out where Hale was living and called there and left my telephone number with Hale's wife and told her to ask Hale to call me for I would be up until midnight. Not receiving a return call from Hale, I decided that Hale was trying to avoid talking with me.

I then personally went to the office of WSIM in Prichard to see Hale but the receptionist said that Hale wasn't in. This was on August 6, 1962. I then called the office of WSIM in Mobile and when the line signaled busy I figured Hale was in so I decided to go see Hale in person.

James C. Burns, a member of Local 1264, and assistant chief Engineer at Station WALA in Mobile, went with me to the office of WSIM in Mobile. We found Hale at the office and Hale immediately apologized to me for not being able to talk with Robinson in Montgomery and explained that he had been so busy he hadn't had time to get in touch with Robinson.

Burns and I then told Hale that it appeared quite obvious that WSIM wanted to operate the station at sub-standard conditions which were below the working conditions we had in our union contracts in the Mobile Area. Also we told Hale that Local 1264 had contacted its lawyer, Tom Adair, and had been advised that the union contract which Local [fol. 79] 1264 had with Station WAIP was not binding upon and, therefore, not in effect as far as WSIM was concerned.

Burns then told Hale that if WSIM wanted to operate under conditions which were less than the working conditions we had established at our union stations that WSIM had a perfect right to do that if that was the way they

wanted to operate, but that Local 1264 wanted to know one way or the other. Burns also stated to Hale that WSIM still had not said whether it was going to use Fridge.

Hale said that he just didn't know but that he wanted to call Robinson at Station WHHY in Montgomery and find something out and that he wanted us to talk with Robinson. Hale called Robinson long distance to Montgomery and after talking to him briefly turned the phone over to Burns. After Burns finished his conversation on the phone with Robinson, we left.

Radio Broadcast Technicians Local 1264, I.B.E.W. began picketing at WSIM in Prichard, Alabama, on August 10, 1962, and we only picket four hours a day or less Monday through Friday and we have also sent a letter to advertisers of WSIM and contacted some of them personally. Our picket sign simply states: "WSIM, Non-Union, Local 1264, I.B.E.W., AFL-CIO".

Local 1264 decided to picket and send a letter to advertisers of WSIM because the working conditions under which WSIM was operating constituted a definite threat to and would undermine the favorable and hard-won working conditions which exist at the radio stations in the Mobile area represented by Local 1264.

On August 14, 1962, I received a telephone call from Ralph O. Howard, Attorney for WSIM, and Howard asked for a meeting so the next day James C. Burns and I met with Attorney Howard, Howard asked us to stop our picketing for thirty or sixty days and Burns said no, for he didn't like this off and on stuff for the Company had decided to operate the station under the working conditions that prevailed there and the Company was within its legal rights in doing so and Local 1264 was within its legal rights in attempting to counteract the undermining of the working conditions established at radio stations in the Mobile area by advising the public that WSIM was non-union.

Two days later on August 17, 1962, Attorney Howard called me again and said that Stan Lightsey from Hatties- [fol. 80] burg, Mississippi, was in town and he wanted to meet with representatives of Local 1264. Burns and I met with Attorney Howard and Stan Lightsey who introduced

himself as from Hattiesburg, Mississippi, and he said that he was comptroller of the Holt Broadcasting Service which included WSIM at Prichard, WHSY at Hattiesburg, WHNY at McComb, and WHHY at Montgomery. Lightsey said he was out of the headquarters of the Holt Broadcasting Service at Hattiesburg, Mississippi.

Stan Lightsey stated that he wanted to talk to us about negotiating a contract and Burns replied that we were not in a position to discuss any contract because WSIM had not recognized Local 1264 and the Local does not represent the employees working at WSIM. Lightsey then asked Burns why the Local was picketing and Burns replied we were picketing to protect the working conditions which we had established at union radio stations from the undermining sub-standard conditions at WSIM.

WSIM announces over the air each day that it is a member of the Holt Broadcasting Service.

Charles W. Holt, who owns majority interest in the above four stations and is general executive head has called Thomas S. Adair, attorney in Atlanta, who represents Local 1264 and has discussed the labor dispute with him.

I have read the above statement and swear that it is true and correct.

/s/ H. D. Smith.

Subscribed and sworn to before me on the 12th day of September, 1962.

/s/ Eleanor Sue Varner, Notary Public, State of Alabama.
(Notarial Seal Affixed)

Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 81]

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

PLEA TO THE JURISDICTION REFILED TO BILL AS AMENDED

This instrument originally filed September 10, 1962, is refiled this the 12th day of September, 1962. Said instrument being set out on pages 7 through 26 of this transcript and is not re-copied herein.

Refiled—September 12, 1962 to Amended Bill

W. Elsworth Haughton, Register

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

AMENDMENT TO PLEA TO THE JURISDICTION—
Filed September 12, 1962

Now come the Respondents in the above matter who have been legally served, and appearing specially for the purpose of filing this Amendment to the Plea to the Jurisdiction, and for no other purpose and without waiving any other defenses which they may have in law or in equity, respectfully show to the Court the following facts:

Respondents amend their Pleas to the Jurisdiction by adding a paragraph to be known as 4 (a) and a paragraph to be known as 14 and which reads as follows:

4 (a)

The Complainant, Broadcast Service of Mobile, Inc., which operates Radio Station WSIM, is only one of a group of four radio stations known as Holt Broadcasting Service and the headquarters of said Holt Broadcasting Service is located in Hattiesburg, Mississippi. The other stations composing the Holt Broadcasting Service are WHHY in Montgomery, Alabama; WHSY in Hattiesburg, Mississippi, and WHNY in McComb, Mississippi. All four of these

stations including WSIM at Prichard, Alabama, are licensed and regulated by the Federal Communications Commission; there exists common ownership over all four stations with one Charles W. Holt controlling the majority interest in all four stations; there is common management of all four stations with Charles W. Holt being the executive head of all four stations; there also exists a common personnel and labor relations policy for all four stations. Therefore the Complainant, Broadcast Service of Mobile, Inc., operator of Station WSIM, is an integral part of an integrated operation of four radio stations located in Alabama and Mississippi and known as Holt Broadcasting Service, and under the National Labor Relations Act, as amended, the volume of business done at each of the aforesaid four radio stations will be considered by the Board in asserting jurisdiction over the labor dispute which is the subject matter of Complainant's bill of complaint, and the revenues received by Holt Broadcasting Service from the operation [fol. 82] of the aforesaid stations greatly exceed $100,000.00 per year.

14

Respondents allege that the Complainant has injected the Alabama Right to Work Law, Title 26, Par. 375, et seq., as a defense solely for the purpose of attempting to find a way for this Honorable Court to assert jurisdiction over the labor dispute as alleged in the Bill of Complaint and amended Bill of Complaint even though it is clear that the Complainant is engaged in a business in interstate commerce or affecting interstate commerce within the meaning of the National Labor Relations Act, as amended. Respondents further allege that the activities of Local 1264 are not in violation of the Alabama Right to Work Law and also that such activities constitute protected concerted activity within the meaning of the National Labor Relations Act, as amended.

Wherefore, Respondents pray that its foregoing Amendment to Plea to the Jurisdiction be allowed, and that the Complainant's Bill for Injunction be dismissed.

Adair, Goldthwaite & Stanford, Morgan C. Stanford, 1431 Candler Bldg., Atlanta 3, Georgia, Pierre Pelham, 704 First National Bank Annex, Mobile, Alabama, Solicitors for Respondents.

Duly sworn to by H. D. Smith, jurat omitted in print.

Filed—September 12, 1962, W. Elsworth Haughton—Register.

Refiled—April 10, 1963 to Bill as last amended April 9, 1963, W. Elsworth Haughton, Register.

[fol. 83]

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

DECREE—September 13, 1962

This cause coming on to be heard on the complainant's motion for a temporary injunction, upon the amended bill of complaint, affidavits submitted by the complainant and the respondent and Exhibit 1 of respondents' plea to the jurisdiction; and upon consideration thereof the Court finds that:

1. The picketing conducted by the respondent union and its agents is entirely peaceful and that there is no threat or apprehension of physical violence;

2. The complainant has five employees none of whom belong to or desire the respondent union to represent them;

3. The purpose of the respondent union's picketing, respondent union's letters addressed to "All Merchants of the Mobile-Prichard Area" and personal contacts by representatives of respondent union with advertisers over complainant's Radio Station is to require complainant to recognize the respondent union as the bargaining agent of complainant's employees or to require the complainant to employ a member of the respondent union as a radio engineer at complainant's station located in Prichard, Alabama.

The Court further finds that each of the objectives of the picketing is contrary to the public policy of the State of Alabama as expressed in the Alabama Right to Work Law and the common law of the State of Alabama.

The Court further finds that the picketing, personal solicitation and solicitation by letter is causing irreparable damage to the complainant and the Court being of the opinion that the complainant's application for a temporary writ of injunction as prayed for in the amended bill of complaint should be granted,

it is, therefore, Ordered, Adjudged and Decreed by the Court that upon the complainant entering into a good and sufficient bond, conditioned as provided by law, in the sum of One Thousand and No/100ths ($1,000.00) Dollars, same to be approved by the Register of this Court, that the Register issue a temporary writ of injunction as prayed for in the amended bill in this cause.

[fol. 84] Done and Ordered, this 13th day of September, 1962.

Joseph M. Hocklander, Circuit Judge in Equity Sitting.

Injunction Bond for $1000 approved and filed September 14, 1962 (omitted in printing).

[fol. 85]

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

IN EQUITY

STATE OF ALABAMA)
MOBILE COUNTY)

To Any Sheriff of the State of Alabama—Greeting:

WRIT OF INJUNCTION—September 14, 1962

We Command You, That, without delay, you execute this writ, and due return thereof how you have executed the same make to us.

To Local 1264, International Brotherhood of Electrical Workers, an unincorporated association, its officers, agents, servants, pickets, members and employees, and William Rayburn, David Fridge and H. D. Smith, and all persons [fol. 86] in active concert and participation with you.

Whereas Broadcast Service of Mobile, Inc., filed their Bill of Complaint in said Court against Local 1264 International Brotherhood of Electrical Workers, and William Rayburn, David Fridge and H. D. Smith, praying, among other things, that Local 1264, International Brotherhood of Electrical Workers, an unincorporated association, its officers, agents, servants, pickets, members and employees, and William Rayburn, David Fridge and H. D. Smith, and all persons in active concert and participation with them, be enjoined from picketing complainant and from engaging in other acts more fully set forth in the Bill of Complaint.

And Whereas, after a hearing upon notice before the Hon. Joseph M. Hocklander on the 10th and 12th day of September, 1962, A. D., he did order on the 13th day of September, 1962 that upon complainant entering into bond with sureties in the sum of One Thousand and 00/100 ($1,000.00) Dollars, payable to Local 1264, International Brotherhood of Electrical Workers and William Rayburn, David Fridge and H. D. Smith and approved by the Register of this Court, and conditioned according to law, a Writ of Injunction issue out of said Court according to the prayer of said Bill: And Whereas, bond has been given and approved as required by said order.

These, therefore, are to Command and Strictly Enjoin you and each of you from:

(a) Picketing in front of or in the vicinity of complainant's offices and transmitter located in Prichard, Alabama;

(b) Causing or attempting to cause persons doing business with or persons desiring to do business with complainant to cease or refrain from doing business with complainant;

(c) Inducing any person that is a party to an agreement with complainant to breach said agreement;

(d) In any manner conspiring, compaigning, confederating, agreeing and arranging with any person to interfere with, hinder or annoy any person who may desire to do business with complainant until the further orders of [fol. 87] this Court. And this you will in no wise omit under penalty, etc.

Witness W. Elsworth Haughton, Register of the Circuit Court of Mobile County, Alabama, Equity Side, this 14th day of September, A. D., 1962.

W. Elsworth Haughton, Register of the Circuit Court of Mobile County, Alabama.

* * * * * * *

[fol. 88]

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

ANSWER TO AMENDED BILL OF COMPLAINT—
Filed October 4, 1962

Now come the Respondents, and without waiving the Plea to the Jurisdiction of the Court heretofore filed, but specifically reserving the same and excepting to the ruling of the Court of September 13, 1962, file this their Answer to the Amended Bill of Complaint, and show as follows:

1.

Respondents admit the allegations of Paragraph 1 and for further answer show that Radio Station WSIM is only one of four radio stations commonly owned and constituting the Holt Broadcasting Service, the other stations being WHHY in Montgomery, Alabama; WHSY in Hattiesburg, Mississippi; and WHNY in McComb, Mississippi.

2.

The allegations of Paragraphs 2 and 3 are admitted.

3.

The allegations of Paragraph 4 are admitted except William Rayburn is not a resident of Mobile County, Alabama, but is a resident of Baldwin County, Alabama.

4.

The allegations of Paragraph 5 are admitted.

5.

Respondents, in answer to Paragraph 6, state that Radio Station WAIP ceased operations at Prichard, Alabama, prior to August 1, 1962, and beginning August 1, 1962, Complainant began operating a station known as WSIM.

6.

Respondents, in answer to Paragraph 7, admit that Complainant on August 1, 1962, commenced operation of Radio Station WSIM, Prichard, Alabama, but deny that the Complainant was operating with a full complement of personnel including but not limited to a radio engineer, and Respondents further show that Complainant is operating with only one radio technician which is less than was used in the operation of Radio Station WAIP at Prichard, Alabama, which had a collective bargaining contract with Respondent Local 1264, IBEW.

[fol. 89]

7.

The allegations of Paragraph 8 are denied, and for further answer Respondents show that on August 1, 1962, David Fridge, who had been employed as a radio technician for Radio Station WAIP, reported for work as usual for he had not been notified by Complainant that it would not need his services as a radio technician. John H. Hale, Manager of Complainant's Radio Station WSIM, was unable to tell Fridge whether he would be used as a radio technician by WSIM or whether WSIM would abide by the collective bargaining agreement which Respondent Local 1264, IBEW, had with Radio Station WAIP.

8.

Paragraph 9 is denied as alleged.

9.

The allegations of Paragraph 10 are denied.

10.

The allegations of Paragraphs 11, 12 and 13 are denied. In further answer to said paragraphs Respondents show that Respondent Local 1264 has not requested Complainant to recognize it as the collective bargaining representative of Complainant's employees and it has at no time requested Complainant to terminate any of its employees in order to employ David Fridge.

11.

The allegations of Paragraphs 14 and 15 are admitted and for further answer Respondents assert that said picketing was legal as Respondent Local 1264, IBEW, was legally privileged to publicly protest and advertise that Complainant paid its employees substandard wages and worked them under substandard conditions which constituted unfair competition with other radio and television stations in the Mobile area under contract with said Respondent Union. Such picketing is legal under applicable Federal law and as such is a constitutional right and privilege under the free speech provisions of the First and Fourteenth Amendments to the Constitution of the United States. Furthermore, such right is guaranteed by Section 7 of the National Labor Relations Act which grants to Respondents herein and other members of Local 1264, IBEW, the right to engage in concerted activity for their [fol. 90] own mutual aid and protection.

12.

In answer to Paragraph 16, Respondents admit that none of the persons who had picketed were employees of the Complainant. Respondents further aver that irrespective

of the fact that the persons picketing were not employees of Complainant each of said persons is entitled to picket as employees under the National Labor Relations Act, as amended, (29 USC 157) for their own mutual aid and protection and under their rights of free speech guaranteed to them by the First and Fourteenth Amendments to the Constitution of the United States.

13.

The allegations of Paragraph 17 as alleged are denied. In further answer, Respondents aver that the allegations of Paragraph 17 are immaterial and irrelevant to any issues in this case as the purpose of the concerted activity engaged in by Respondent Local 1264, IBEW, and its members was not to have Complainant recognize Respondent Local 1264, IBEW, but is for the purpose of attempting to prevent Complainant from undermining and destroying the working conditions which Respondent Local 1264, IBEW, has through many years of hard work established at the many radio stations in the Mobile area which are under contract with Local 1264, IBEW.

14.

Respondents admit the allegations of Paragraph 18 and for further answer show that their activity of picketing and in sending letters to business firms in the Mobile area are legally protected concerted activities, the right to engage in which is guaranteed by the National Labor Relations Act, as amended, and that such activities were in exercise of the right of free speech and assembly guaranteed and protected to Respondent's members by the First and Fourteenth Amendments to the Constitution of the United States, the exercise of which cannot properly or legally be prohibited by the injunction of this Court.

15.

Respondents deny the allegations of Paragraph 19 as alleged. In further answer, Respondents show that the letter marked Exhibit E was mailed to the companies shown on

[fol. 91] Exhibit 1, attached to and made a part of the Plea to Jurisdiction, by the Respondents in this matter. Respondents further show that any activity engaged in by them and made in the aforesaid letter and in personally contacting companies in the Mobile area are legally protected concerted activities for the purpose of protecting the working conditions which Respondent 1264, IBEW, has through the years established at radio stations in the Mobile area from being undermined by the Complainant in this case and that such activities are protected and guaranteed by the National Labor Relations Act, as amended, and are an exercise of the right of free speech and assembly guaranteed and protected to Respondent Local 1264, IBEW, and its members, by the First and Fourteenth Amendments to the Constitution of the United States.

16.

In answer to Paragraph 20, it is admitted that David Fridge and H. D. Smith have participated in the mailing of the letter marked as Exhibit A and have personally contacted a few of the merchants in the Mobile-Prichard area. It is denied that William Rayburn has engaged in such activities.

17.

Respondents deny the allegations of Paragraphs 21, 22, 23, 24 and 25.

18.

Respondents deny the allegations of Paragraph 26 as alleged. For further answer Respondents show that the object of the picketing and sending of the letter to merchants in the Mobile-Prichard area was to advise the public of the unfair and inferior wages and working conditions at Station WSIM which is undermining the wages and working conditions established at radio stations under contract with Respondent Local 1264, IBEW, and, as a means of counteracting the unfair competition and undermining effect of the wages and working conditions at WSIM, to

encourage the public and advertisers to do business with Union stations in the Mobile-Prichard area.

19.

Respondents deny the allegations of Paragraphs 27, 28, 29 and 30.

[fol. 92]

20.

For further answer Respondents show that Local 1264, IBEW, prior to the time that Complainant acquired control of the radio station in Prichard, had a collective bargaining contract with Station WAIP which had established fair wages and working conditions in line with the many other radio stations in the Mobile area under contract with Local 1264, IBEW. Respondent Local 1264, IBEW, after Complainant acquired the aforesaid radio station at Prichard, sought to ascertain if Complainant would continue the wages, hours and working conditions which Local 1264, IBEW, had established at radio stations in the Mobile area. Complainant refused to give any assurance that it would maintain wages, hours and working conditions equivalent to those which prevailed at Union radio stations in the Mobile area and, in fact, Complainant put into effect wages, hours and working conditions inferior to those prevailing at radio stations under contract with Local 1264, IBEW, and thus Complainant's present practices constitute a distinct threat of undermining the wages, hours, and working conditions at radio stations under contract with Local 1264, IBEW.

Therefore, the working conditions put into effect at Complainant's Station WSIM are calculated to and will do irreparable damage and harm to the fair working conditions at the Union radio stations in the Mobile area and thus constitutes unfair competition by Complainant's Radio Station WSIM so that the radio stations under contract with Respondent Local 1264, IBEW, will insist on putting into effect at their radio stations the same inferior and unfair working conditions which prevail at Complainant's radio station WSIM.

21.

In further answer, Respondents show that the within dispute affected interstate commerce and the National Labor Board has exclusive jurisdiction over the allegations of Complainant's Amended Bill of Complaint and if the same be illegal under Federal Law this Court has no jurisdiction to grant the redress or the relief prayed for in the Amended Bill of Complaint. If the conduct of the Respondents complained of by the Complainant is not illegal under Federal Law then it is protected under the provisions of [fol. 93] the National Labor Relations Act, as amended, and in that event this Court does not have jurisdiction to grant redress or an injunction or any other relief prayed for in the Amended Bill of Complaint.

22.

In further answer Respondents show that all of their activities have been legal under Federal Law and Alabama law and to enjoin the same would infringe upon the rights of the Respondents herein and all of the members of Respondent Local 1264, IBEW, under the First and Fourteenth Amendments to the Constitution of the United States.

Wherefore, having fully answered and waiving discovery, Respondents pray the judgment of this Court, that the injunction heretofore issued be dissolved and that the Amended Bill of Complaint be dismissed with costs cast upon the Complainant.

Respectfully submitted,

Adair, Goldthwaite & Stanford, By Morgan C. Stanford, 1431 Candler Bldg., Atlanta 3, Georgia.

Pierre Pelham, 704 First Natl. Bank Annex, Mobile, Alabama.

Duly sworn to by H. D. Smith, Wm. R. Rabon and David Fridge, jurat omitted in printing.

[fol. 95] [File endorsement omitted]

Certificate of Service (omitted in printing).

Refiled to Bill of Complaint as last amended April 9, 1963 this 10th day of April, 1963. W. Elsworth Haughton, Register.

[fol. 96]

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

SECOND AMENDMENT TO COMPLAINT—Filed April 9, 1963

Comes the complainant and amends its amended complaint by adding thereto the following:

31. In *Raritan Valley Broadcasting Company, Inc.*, 122 NLRB 90, 91, 92, decided November 14, 1958, the National Labor Relations Board issued a rule of decision within the meaning of Section 14(c)(1) of the Labor Management Relations Act, as amended, 29 USCA 164(c)(1) wherein it declined to assert jurisdiction over any labor dispute involving a class or category of employers, namely enterprises engaged in the operation of radio or television broadcasting stations which do not do a gross volume of business of at least $100,000.00 per annum.

Attached hereto marked Exhibit B and made a part hereof is an excerpt from the Board's decision.

32. The revenues of the complainant from its inception to the time of the filing of its bill of complaint were at a rate substantially less than $100,000.00 per annum. During the same period complainant's purchase of goods which originated outside the State of Alabama were substantially less than $5,000.00 per annum.

Dated at Mobile, Alabama, this 9th day of April 1963.

Respectfully submitted,

[fol. 97] Kilborn, Darby and Kilborn, By Willis C. Darby, Jr., Attorney for Complainant.

Duly sworn to by Willis C. Darby, Jr., jurat omitted in printing.

EXHIBIT B TO SECOND AMENDMENT TO COMPLAINT

EXCERPTS FROM RARITAN VALLEY BROADCASTING COMPANY, INC., 122 NLRB 90

The Board has decided that it will better effectuate the policies of the Act to assert jurisdiction in all future and pending cases involving enterprises engaged in the operation of radio or television broadcasting stations or telephone or telegraph systems which do a gross volume of business of at least $100,000 per annum.

• • • • • • •

It is the Board's opinion that in the light of its current budgetary limitations and the volume of cases which may be [fol. 98] expected under its other standards, the $100,000 gross volume of business standard will extend the Board's jurisdiction over communications systems to the maximum possible extent at this time and will reasonably ensure that the Board will assert jurisdiction over all labor disputes involving such enterprises which tend to exert a pronounced impact on commerce.

[File endorsement omitted]

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

PLEA TO THE JURISDICTION REFILED TO BILL AS LAST AMENDED APRIL 9, 1963—FILED APRIL 10, 1963

This instrument originally filed September 10, 1962, is refiled this the 10th day of April, 1963, to Bill as last amended, April 9, 1963, and said instrument being set

out on pages seven (7) through twenty-six (26) of this transcript and is not re-copied herein.

Refiled—April 10, 1963 to Bill as last amended, April 9, 1963, W. Elsworth Haughton, Register.

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

AMENDMENT TO PLEA TO THE JURISDICTION REFILED TO BILL AS LAST AMENDED APRIL 9, 1963—Filed April 10, 1963

This instrument originally filed September 12, 1962, is refiled this the 10th day of April, 1963, to Bill as Last Amended April 9, 1963. Said instrument being set out on pages Eighty-one (81) through Eighty-two (82) of this transcript and is not recopied herein.

Refiled—April 10, 1963 to Bill as last amended April 9, 1963, W. Elsworth Haughton, Register.

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

ANSWER TO AMENDED BILL OF COMPLAINT FILED 10/4/62 REFILED TO BILL OF COMPLAINT AS LAST AMENDED APRIL 9, 1963—Filed April 10, 1963

This instrument originally filed October 4, 1962, is refiled this the 10th day of April, 1962, to Bill of Complaint as last amended April 9, 1963. Said instrument being set out on pages 88 through 95 of this transcript and is not recopied herein.

Refiled to Bill of Complaint as last amended April 9, 1963 this 10th day of April, 1963, W. Elsworth Haughton, Register.

[fol. 99]

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

ANSWER TO COMPLAINT AS AMENDED APRIL 9, 1963—
Filed April 10, 1963

Come the Respondents and without waiving the plea of the jurisdiction of the Court heretofore file specifically reserving the same answer the amendment to the Bill of Complaint filed April 9, 1963 as follows:

1. Paragraph 31 is admitted except that Respondents show that the $100,000.00 standard may be computed upon the basis of monthly sales at the time of hearing projected over a twelve month period.

2. Paragraph 32 is denied. Respondents show that the total impact on interstate commerce as measured by the combined operations of all affiliated enterprises under common ownership management and control exceeds the $100,000.00 jurisdictional standard required by the NLRB for assertion of jurisdiction. Stations WSIM and WHHY alone sell advertising at a monthly volume which equals a total of approximately $200,000.00 per annum.

Wherefore, having fully answered, and waiving discovery, Respondents pray the judgment of this Court, that the injunction heretofore issued be dissolved and that the Amended Bill of Complaint be dismissed with costs cast upon the Complainant.

Respectfully submitted,

Adair, Goldthwaite & Stanford, By J. R. Goldthwaite, Jr., 1431 Candler Bldg., Atlanta 3, Georgia.

Pierre Pelham, 704 First Natl. Bank Annex, Mobile, Alabama.

[fol. 100] *Duly sworn to by H. D. Smith, jurat omitted in printing.*

[File endorsement omitted]

[fol. 101]

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

THIRTEENTH JUDICIAL CIRCUIT

IN EQUITY

Case No. 58,568-H

BROADCAST SERVICE OF MOBILE, INC., Complainant,

Complainant,

VS.

LOCAL 1264 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, WILLIAM RAYBURN, DAVID FRIDGE, H. D. SMITH, Respondents.

Transcript of Proceedings

Be It Remembered: That heretofore, on to-wit, the 9th, 10th, and 11th days of April, 1963, the same being four of the judicial days of the said Court, this cause came on for a hearing before the Honorable Joseph M. Hocklander, sitting as Judge, in Equity, without a jury, whereupon the proceedings were had, in due form of law:

APPEARANCES:

Kilborn, Darby & Kilborn, by: Willis C. Darby, First National Bank Building, Mobile, Alabama, for the Complainant.

Stone & Howard, By: Ralph Howard, First National Bank Building, Mobile, Alabama, for the Complainant.

Adair, Goldthwaite & Stanford, By: Mr. J. R. Goldthwaite, Jr., 1431 Candler Building, Atlanta 3, Georgia, for the Respondents.

Mr. Pierre Pelham, First National Bank Building, Mobile, Alabama, for the Respondents.

[fol. 102] (Whereupon, this cause came on for hearing on the morning of April 9th, 1963, at which time the following occurred:)

The Court: Let the record show that it is agreed between the parties that all of the testimony offered today shall be considered by the Court both on the plea of jurisdiction and on the merits. All right, call your witnesses in on the plea to the jurisdiction.

Mr. Goldthwaite: If Your Honor, please, I would like to have Mr. John Hale called. He is here at the instance of the Plaintiff, he was the station manager for Plaintiff and was a witness in the previous hearing by affidavit for the Plaintiff. Under the circumstances, not having had an opportunity to question Mr. Hale fully, I would not like to call him as my witness; I would like for the Court to call him as a witness.

Mr. Darby: We would oppose that, Your Honor, Mr. Hale is no longer employed by us. He certainly shouldn't be called as the Court's witness, if they want his testimony they can call him as their own witness. I would much like to examine all—

The Court: What do you propose to show by it?

Mr. Goldthwaite: The operations of the Plaintiff.

(Off the record discussion.)

The Court: I am not going to grant you that request, if you call them, they will be your witnesses.

Mr. Goldthwaite: Come down, Mr. Hale.

The Court: Well, let's bring in all the witnesses who are going to testify and get them sworn.

(Off the record discussion.)

(Here the witnesses were sworn in and the rule invoked at the request of the Complainant.)

Mr. Darby: May it please the Court, we would like to have Mr. Givens excluded from the rule, he is our manager here in Mobile.

The Court: All right. I will excuse one man from the rule.

Mr. Goldthwaite: Mr. Smith will be our representative—

The Court: Well, wait a minute. Mr. Smith is a party; the rule doesn't apply to parties. You are entitled to one representative and you are entitled to have William Rayburn, David Fridge and H. D. Smith, with you.

Mr. Goldthwaite: Were they individually made parties Defendant?

The Court: Yes, sir. All right. Now, the Complainant [fol. 103] has asked for the rule and anyone who is not a party must leave—and who is going to testify, must leave the Courtroom. In addition to the named Defendant, you are entitled to have one representative of the International Brotherhood of Electrical Workers. Are we ready to begin, gentlemen?

Mr. Darby: Before taking testimony, I believe it might be helpful—

(Off the record discussion.)

The Court: Are we ready to begin now?

Mr. Goldthwaite: Yes, sir.

The Court: Call your witness.

Mr. John H. Hale, a witness for the Defendant, having been first duly and legally sworn, testified as follows:

On Direct examination.

By Mr. Goldthwaite:

Q. You Mr. John M. Hale?

A. John H. Hale.

Q. Mr. Hale, were you formerly manager of radio station, WSIM, which is operated by Broadcast Service of Mobile, Incorporated?

A. Yes, sir.

Q. Who,—when did you become manager of station WSIM?

A. August 1st, I believe was the date the station went on the air, and that was the date I became—

Q. Of 1962?

A. Of 1962.

Q. How long did you serve as station manager of WSIM?

A. Until the first part of January, I am not sure about the date there.

Q. Were you employed by Broadcast Service of Mobile prior to the time it started operating station WSIM?

A. I am not sure I understand. I was employed as of the day the station began.

Q. For that Company?

A. By Broadcast Service of Mobile, yes, sir.

Q. For whom did you work prior to August 1st, 1962?

A. I worked for Bob Robinson, Broadcast Service of Montgomery.

Q. Broadcast Service of Montgomery?

A. Uh-huh.

[fol. 104] Q. What is the name of that station?

A. WHHY.

Q. How long did you work at WHHY?

A. About five years.

Q. Five years. In what capacity were you employed at WHHY?

A. At that particular time or over the period of time?

Q. Well, let's start at the end of the time you were in Montgomery with WHHY.

A. I was Assistant Manager of that station.

Q. Assistant Manager?

A. Yes.

Q. How long were you Assistant Manager?

A. For about a year or eighteen months.

Q. Prior to that you were in sales?

A. In sales, announcing.

Q. What—Mr. Robinson is Manager of station WHHY, is he?

A. Yes, sir. This title might be a little bit wrong. General Manager, Manager.

Q. He has a financial interest in station WHHY also, does he not?

A. As far as I know.

Q. Sir?

A. As far as I know.

Q. He does?

A. Yes.

Mr. Darby: I object unless he shows how this witness would know, Your Honor.

Mr. Goldthwaite: If he was Assistant Manager he should know who had a financial interest in it.

The Court: I sustain the objection. The answer, "As far as I know" is not going to be sufficient. I'll exclude that answer on your motion.

Mr. Goldthwaite: Mr. Hale, do you know whether or not Mr. Robinson had a financial interest in station WHHY?

A. That is the question you just asked.

Q. Yes, sir. Do you know whether he did or not?

A. No. I don't know.

Q. You don't know. Do you know Mr. Charlie Holt?

A. Yes. I know Mr. Holt.

Q. Who is Charlie Holt?

[fol. 105] A. Well, now, he is an associate in the radio business.

Q. An associate?

A. Right.

Q. What do you mean by an "associate"?

A. Well, I am not sure I know how to answer your question. How do I know him?

Q. Yes. He is principal stockholder in Radio Broadcast Service of Mobile, was he not?

Mr. Darby: I object unless it is shown how the witness would know. Stock certificates, Your Honor, would actually be the best evidence.

Mr. Goldthwaite: He knows—

Mr. Darby: I don't think this witness is now employed by these complainants—the certificates themselves would be best evidence.

Mr. Goldthwaite: The witness knows—

The Court: Overruled, the witness knows.

A. Well now, sir, I am not sure what constitutes my knowledge other than having heard names dropped. I have never seen any papers or anything of this sort.

Mr. Goldthwaite: Well, you know Mr. Holt is the principal owner of four radio stations, don't you?

A. I don't know this.

Q. Mr. Hale, you were manager of station WSIM?

A. Right.

Q. And, you had an announcement on that station every day that this was one of—that the station was a member of the Holt Broadcasting Service, didn't you?

A. Yes, sir. That is correct.

Q. And, that had a meaning, did it not?

Mr. Darby: I object to what it is supposed to have meant to this witness. I don't think—a lot of stations in town are members of the National Broadcasting System or the Columbia Broadcasting System but it doesn't have any proof of any kind of inner relationship.

The Court: Overruled.

Mr. Goldthwaite: That did have a meaning, did it not?

A. I am not sure what. It had a meaning because Mr. Holt said, "Let's say it."

Q. Mr. Holt said, "Let's say it"?

A. Right.

[fol. 106] Q. So, you took instructions from Mr. Holt to put that over the air on WSIM?

A. Right.

Q. Now, Mr. Holt also had that put over the air on some other stations, did he not?

A. I don't know, sir.

Q. He had it put over there on WHHY in Montgomery, did he not?

A. I don't recall that it was.

Q. When you were there?

A. It never was while I was there.

Q. Now, you know, as a matter of fact, Mr. Hale, that Mr. Holt is the principal owner of radio station WHHY in Montgomery, radio station, WHSY in Hattisburg, Mississippi and WHNY in McComb, Mississippi and WSIM here in Mobile in Prichard, Alabama, isn't that correct?

Mr. Dan[illegible]: May it please the Court, I don't think those questions are really intelligible to the witness or would be answer to the Court as to what the principal owner is. You have got a question, I presume of some percentage of stock ownership. And, whether or not the Court would consider it a principal owner, it would be a conclusion; how much stock would it take to make a principal owner in a corporation? The principal owner might own 40% and those other people might own—if he doesn't ask you don't know what it is, it is just a guess or a conclusion. We submit it is not a proper question.

The Court: Overruled.

Mr. Goldthwaite: Is Mr. Holt the principal owner of those four radio stations?

A. To my knowledge he is in Mobile.

Q. In Mobile.

A. At WSIM.

Q. And, to your knowledge, he is in Montgomery?

A. In Montgomery. Now, I have never employed by—

Q. At the other two stations, right?

A. —at WHNY and WHSY.

Q. You read the Trade Journals, don't you?

A. Very seldom.

Q. Very seldom. You worked in Montgomery for five years under Mr. Robinson?

A. Right.

[fol. 107] Q. And, Mr. Robinson took his instructions from Mr. Holt, did he not?

A. Uh—

Q. You were Assistant Manager, weren't you, Mr. Hale?

A. Yes, sir.

Q. And, you took instructions from Mr. Holt, did you not?

A. No, sir. I took my instructions from Mr. Robinson.

Q. Suppose Mr. Robinson was not there?

A. I never had occasion on any time in Montgomery to be told anything by Mr. Holt.

Q. Mr. Robinson gave the instructions that Mr. Holt—he says, "Charlie says to do this", did he not?

A. No, sir.

Mr. Darby: I object to such hearsay.

Q. He never said that?

Mr. Darby: It is hearsay on its face, "Charlie says to do this."

The Court: Are these employees of the Corporation?

A. Sir?

The Court: These people they are asking you about, are they employees of the Corporation, Broadcasting Company?

A. Of Mobile?

The Court: Either one.

A. Well, I don't know how to answer it—employees.

The Court: Did they work there?

A. They worked there, they were part of it.

The Court: Overruled.

Mr. Goldthwaite: Mr. Holt came to Montgomery from time to time while you were working there, did he not?

A. Yes, sir.

Q. How many people did Station WHHY employ?

A. About twelve or fourteen.

Q. Twelve or fourteen people?

A. Twelve or fourteen, it varies, it might get more than that, it might drop to a smaller number.

Q. Where were they employed? All in one office or more than one location?

A. All in one location. I don't want to say the wrong thing here.

[fol. 108] Mr. Goldthwaite: That's all right. You just tell the truth, Mr. Hale.

A. What I mean is, I don't want to make a mistake and accidentally not tell the truth. Our transmitter location is at a different site from our office. So, any employee, any engineer, would naturally spend some of his time at the transmitter. So, we had a different location, we had a transmitter site and a business office.

Q. And, this was Station WHHY you are referring to?

A. WHHY in Montgomery.

Q. And, you worked in the business office?

A. Right. For all practical purposes, that was the location. Everybody worked there.

Q. All these twelve or fourteen people that worked for that station worked in the same location at least part of the time?

A. Right.

Q. How big was this location, the studio and office area of the station?—physical.

A. I would estimate fourteen, fifteen hundred square feet, it had four or five rooms in it.

Q. Four or five rooms.

A. An office, a group of offices in a building.

Q. Mr. Holt came over and visited the offices and studios from time to time, did he not?

A. Occasionally.

Q. You knew where Mr. Holt lived at that time?

A. The city he lived in.

Q. Yes, sir. What city did he live in?

A. Hattisburg, Mississippi.

Q. Hattisburg, Mississippi? You had occasion to have discussions with him while you were Assistant Manager when he would visit in Montgomery, did you not?

A. By discussions, I would imagine two or three times in that period of time.

Q. You talked to him personally?

A. I had a cup of coffee in a group of people when he was there. Beyond that I don't recall any specific conversation.

Q. He did talk about the conduct of the business of station WHHY?

A. Sir, I don't recall that we did. Other than just radio business, in general. I don't recall ever having, at WHHY, ever being told by Mr. Holt anything about the [fol. 109] business.

Q. You knew he was principal owner of the station and he gave the policy instructions of the station to Mr. Robinson?

Mr. Darby: I object. He couldn't possibly know it, the man said he never talked to him about it.

Mr. Goldthwaite: I asked him if he knew that.

Mr. Darby: He couldn't possibly know except from some kind of hearsay. And, there is no evidence in the record that it is true, and he is asking him if he knew it.

The Court: Overruled.

Mr. Goldthwaite: Sir?

A. I'm sorry. What—

Q. You knew that Mr. Holt was principal owner of the station and that Mr. Robinson gave policy instructions as to the conduct of the station's business, didn't you?

A. That Mr. Robinson gave—

Q. That Mr. Holt gave Mr. Robinson policy instructions as to the conduct of the station's business.

A. I would assume this.

Q. You knew that as Assistant Manager?

Mr. Howard: I am going to object to what this witness would assume.

The Court: Sustained.

A. I'll have to say this—

Mr. Darby: I object. I don't think there is a question before the witness.

Mr. Goldthwaite: Go ahead, sir.

Mr. Darby: That is not a question, Your Honor. I would object to "Go ahead, sir" as a question.

The Court: Well, the question is did he know that Mr. Robinson—is that the gentleman we are inquiring about now?

Mr. Goldthwaite: Mr. Holt and Mr. Robinson.

The Court: Formed policy—

Mr. Darby: Your Honor, he has already testified he assumed it.

The Court: Well, now, witnesses quite often use the word, "assume" when they mean that they know. And, this witness impresses me as trying to answer the questions as best he can. The question is, "do you know these things?" You are not entitled to assume or guess as far as the law is [fol. 110] concerned.

A. Sir, can I say it this way? Over the period of time at WHHY on these occasions when Mr. Holt would visit the studios and the offices, I have seen he and Mr. Robinson

together in the office; I have seen them huddled together, meeting together, this sort of thing. Again, I don't recall ever having been on this other than an occasional cup of coffee in which the radio business in general was discussed. Having been associated with them that period of time, I assume what you ask is true. Now, beyond seeing this, I don't know.

Mr. Howard: I am going to object to what the witness assumes.

The Court: I sustain your objection to that.

A. That is as far as I could go. I just don't recall. I know Mr. Robinson ran the radio station and I know he ran it the way he wanted to run it.

Q. In Montgomery?

A. At WHHY.

Q. You remember meeting with Mr. H. D. Smith sitting here at my left?

A. Yes, sir.

Q. And Mr. Dave Fridge and Mr. James Burns and Mr. M. C. Averette on August 1st, the first day you opened up that station at WSIM, do you not?

A. Sir, I thought it was a day or two after that. We opened up as WSIM on August 1st, and I thought it was about August 3rd, two or three days later. I don't remember it on the first.

Mr. Howard: Excuse me. We missed the answer of the witness, the question and answer just before this one, could we have this young lady read it back?

(The Reporter so does)

Mr. Goldthwaite: You met with—when you first started operating the station on the first or second or third of August with the persons I mentioned, did you not?

A. Yes, sir.

Q. Dave Fridge brought Mr. Smith and Mr. Averette out and introduced them to you?

A. Yes, sir. But, I don't remember all three of them at one time. I remember Mr. Smith and Mr. Fridge on the first, on this trip you are talking about. I don't recall meet-

ing Mr. Averette on that visit; now, he could have been [fol. 111] there, I just don't recall.

Q. You remember Fridge and Smith coming out?

A. Yes, sir. On the second or third of August, a day or two after we started the operations.

Q. And, the subject matter of the conversation was whether or not radio station WSIM was gonna employ Fridge as Broadcast Technician, was it not?

Mr. Darby: I object, Your Honor.. He can say what was said; that is a conclusion as to whether the subject matter was that. The Court doesn't know what was said.

The Court: I sustain it.

Mr. Goldthwaite: What was the subject matter of the conversation?

A. Well, it covered two or three areas. One, that Mr. Fridge would be employed, whether or not he would be employed by WSIM. I was told at the time that the radio station had a contract with the local union.

Q. What radio station, WAIP?

A. WSIM. And, this was what it concerned. Now, more than this or what—

Q. You did discuss whether or not Fridge was going to work for WSIM?

Mr. Darby: May it please the Court, I think it would be appropriate for the witness to say what was said rather than what was discussed and the Court can get some intelligent matter out of what they talked about.

Mr. Goldthwaite: All right. Not what they discussed, what they said.

A. Well, I don't remember which party spoke when and this sort of thing. But, Mr. Smith, early in the conversation, asked me if we—I think first if—our feelings about using Mr. Fridge as our engineer at WSIM. He also, as I say, mentioned something about our union, that WSIM did have a contract with this union. I said, "As far as I know, we cannot use Mr. Fridge; we do not have a contract with the union." And, if I remember correct, I think

it was on this visit that Mr. Smith showed me a clipping, I think it was Mr. Smith, one of the gentlemen, showed me a clipping from a magazine showing we did have a contract that had to be honored because the union affiliation [fol. 112] had to go from one Company, if it is sold the contract goes with it, and this sort of thing. And, I said, "As far as I know I had no way to talk to you, you will have to talk to Mr. Robinson or Mr. Holt."

Q. You told them they would have to talk to Mr. Robinson or Mr. Holt?

A. Right.

Q. About whether Fridge was going to be employed?

A. No. I told them as far as I was concerned we could not use Mr. Fridge. Now, they proceeded to tell me he was employed and as far as they were concerned he was on our payroll, and they were going to leave him at the station and since he would be there we might as well use him. And, I said, "I'd rather you not do this, I don't know what my situation is here. I don't know what the legal aspects are." But, I didn't want that situation.

Q. You told them he'd have to talk to Mr. Robinson about it?

A. I said they should and they said, "We don't have to talk to anybody, to Mr. Robinson or Mr. Holt, because you are the manager of the station."

Q. Mr. Robinson at that time was Manager of Station WHHY in Montgomery?

A. Right.

Q. But, you were taking your instructions from him on matters of policy, is that right?

A. At WSIM?

Q. Yes.

A. Right.

Q. And, also from Mr. Holt.

A. There again is a vagueness here, and I don't know how to explain it other than the fact that I took my instructions from Mr. Robinson. If Mr. Holt occasionally said to do something, I did it.

Q. You told these boys that were visiting that Mr. Holt was the top boss over four radio stations, didn't you?

A. I don't know whether I said it like that or not. No.

Q. Well, just how did you tell them that?

A. I don't recall exactly. Other than saying they would have to discuss this matter with Mr. Robinson or Mr. Holt.

Q. But, you remember discussing with them the fact that Charlie Holt owned this station and the Montgomery sta- [fol. 113] tion and two stations in Mississippi, don't you, Mr. Hale?

A. That he owned them?

Q. Yes.

A. No. Not as such. Not saying that, that he owned them.

Q. You said he was the boss over those four stations?

A. To that extent, yes, sir. Right, that he's the man or Robinson was the man to talk to about it.

Q. You also talked to them about a man named W. B. Stevenson, did you not?

A. I don't recall, sir. In what—if you—

Q. Do you know W. B. Stevenson?

A. Walter Stevenson, right.

Q. Walter Stevenson?

A. Yes, sir.

Q. He was Chief radio technician at Station WHHY in Montgomery?

A. Right.

Q. And, you told the boys that he had been down looking over the Prichard Station at WSIM?

A. Well, actually, he was employed by WSIM temporarily to take inventory, re-do and re-build and so forth.

Q. He came down from the Montgomery station to WSIM?

A. Uh, yes, sir.

Q. Who instructed him to come down?

A. Well, I believe, that I asked if this could be done.

Q. Who did you ask?

A. Bob Robinson.

Q. All right. And, what happer ?

A. It was agreed to that he could handle it. Now, I am not sure how much instigation of this I had to do with.

Q. Mr. Hale, before—this happened before WSIM went on the air, did it not?

A. Possibly a day or two, something of that nature. I'm not sure it did, sir. I know he was down there with us that first day or within a day or two and I don't recall whether it was August 1st, or August 2nd or the latter part of July.

Q. How long was he down here?

A. Uh, about a week, more or less.

Q. What happened to him after he left here?

[fol. 114] A. He went back to his job at WHHY.

Q. WHHY in Montgomery?

A. Right.

Q. Was he on your payroll at WSIM? Did you actually pay him out of—

A. Sir, I would have to check the records to find out.

Q. You don't remember what--

A. I don't recall at this time.

Q. —if he was just continued on the WHHY payroll or on the WSIM?

A. I would have to check the records to find out; I don't remember.

Q. Now, you had a conversation with Mr.—these boys on that occasion, as to what your plans were about employing an engineer to work at Prichard, WSIM, did you not?

A. Yes, sir.

Q. You told them that—

Mr. Darby: I object to him leading the witness, Your Honor. It is his witness.

The Court: Sustained.

Q. What did you tell them about that subject?

A. Just a minute now. So many different things were happening at that first two or three week period of this organization, it is hard to remember, which is which.

Q. Did you discuss the Holt group of four stations employing a consulting engineer who would be the chief engineer at WSIM and resident at WSIM?

A. It seems to me that I did mention something along these lines. I have forgotten the man's name now that we discussed. But, there had been a plan, a talk, an idea, to use an engineer at WSIM to do consultant work for WHHY, if needed.

Q. Also for—W—

A. HHY and HSY.

Q. And, WHSY.

A. And any other station, this particular man does consultant work for stations, as far as I know, around the Country, throughout the Southeast anyway.

Q. Who put forward this idea, Mr. Holt?

A. Bob Robinson.

[fol. 115] Q. Mr. Robinson did. Do you know Mr. Stan Lightsey?

A. Yes, sir.

Q. Who is Stan Lightsey?

A. He is a member of the organization at WSIM. He does the overall bookkeeping.

Q. He does the overall bookkeeping for WSIM?

A. Right.

Q. What is his official title, do you know?

A. I don't off hand; I am sure it is in our records.

Q. He is Comptroller of the Holt Broadcasting Service, isn't he?

A. I have heard that. Whether this is an official title, I can't say. I think I have used that term before.

Q. You got it from somewhere?

A. That's right. Maybe for lack of a better word, but—

Q. Where does Lightsey live?

A. In Hattiesburg.

Q. Hattiesburg? He keeps his offices at WHNY, or is it WHSY?

A. WHSY.

Q. WHSY. That is where Charlie Holt keeps his office, too? His central office, is it not?

Mr. Howard: I am going to object. I am not sure the witness understands exactly what is being asked. Is the question you are asking him whether or not WHSY or whatever it is in Hattiesburg has the same offices with Stan Lightsey, is that the question?

Mr. Goldthwaite: I asked him if Stan Lightsey doesn't keep his office at Station WHSY in Hattiesburg?

A. Yes, he does.

Q. And, that is where Charlie Holt keeps his office?

A. Yes, sir.

Q: What does Mr. Lightsey have to do with station WSIM?

Q. Keeps the books, keeps the financial part of the operation going. Now, about the overall, we keep books at the radio station for Accounts Payable, Accounts Receivable, etc., daily billing, posting of accounts, uh—

Q. Mr. Lightsey didn't do that, did he? He had a bookkeeper who did that?

A. Right.

Q. What did Mr. Lightsey do?

[fol. 116] A. Just sort of the final roundup at the end of the month, to check and see if our figures are right, make sure the bills have gone, make sure the accounts have been treated properly and this sort of thing.

Q. He did a Comptroller's job, a supervising, auditing job?

A. Right.

Q. He did the same thing at WHHY in Montgomery, too, didn't he?

A. Yes, sir.

Q. And, he took the reports that he, the summaries that he drew up back to Hattiesburg with him, didn't he?

A. Actually, he did not make a trip; this was not a monthly trip for him. Let me say it like that, you mentioned taking things back to Hattiesburg. In Montgomery, at WHHY, I think I remember seeing him about twice, maybe only once during this period of time.

Q. As Manager of WSIM, did you send in any reports to Hattiesburg?

A. Yes, sir.

Q. Did you send reports to Mr. Holt?

A. Yes, sir, or to Mr. Lightsey.

Q. You sent them to Mr. Lightsey. How did you address the envelope to Mr. Lightsey?

A. Mr. Stanley, whatever his middle initial is, Lightsey, Radio Station WHSY, Post Office Box whatever it was, Hattiesburg.

Q. What kind of reports did you send Mr. Lightsey?

A. Daily report of the amount of business we had done, the general economic status of the station that day, the amount of money deposited in the bank if any, and this sort of thing. The amount of sales made.

Q. Daily sales?

A. Daily sales, just the general economic status of the station by the day.

Q. What do you mean by "sales", Mr. Hale?

A. A sale of radio time, spots, program.

Q. Sale to a customer of advertising time?

A. To an advertiser for advertising time, right.

Q. WHHY send in the same sort of report to Mr. Lightsey?

A. Yes, sir.

Q. They did?

A. Yes, sir.

[fol. 117] Q. Send them in daily?

A. Yes, sir.

Q. And, how were they addressed from WHHY in Montgomery?

A. The same way. I think it was done with a rubber stamp that the Secretary had made up. To WHSY, Post Office Box whatever it was, Hattiesburg.

Q. What sort of reports did you send to Mr. Holt?

A. We sent nothing other than these daily reports to Mr. Lightsey.

Q. That's the only reports you sent in?

A. Yes, sir.

Q. How long were you manager of WSIN?

A. Approximately six months.

Q. How many times during that six months did Mr. Holt come to Prichard or Mobile?

A. At least once every two weeks, maybe more often, maybe slightly less.

Q. How many times did Mr. Robinson come to Mobile during that time?

A. Once that I recall.

Q. Just once?

A. Right.

Q. What did you talk about with Mr. Holt when he came to Mobile?

A. Sir, you would have to know Mr. Holt for me to answer this question properly, and you might know Mr. Holt. You talk about radio business in general, you talk about

how to make a sale of advertising time and then you go back to radio business in general and this sort of thing, and it goes around and around, and when you get through you wonder what you have talked about exactly. But, this is—it concerns radio, general operation of radio stations, how to sell, how to announce, how to do everything connected with the business.

Q. Giving you instructions as to how to run WSIM?

A. No, sir. No, sir. This might have been a part of it from time to time. As I say, the general conversations with Mr. Holt are one and the same. If he came in today, if he came in two weeks from now, the same general thing, policy is very, as you asked it is not discussed. Or, if so, it is sort of a secondary thing. You discuss radio in general, how to do this, how to do that and you end up with the same discussions over and over again. Very stimulating, very invigorating, very educational, but it is just [fol. 118] in general terms. As far as dictating policy as such, I don't recall. I am not saying he hasn't.

Q. What is the purpose of a radio station?

A. The purpose of a radio station?

Q. Yes, sir.

A. I don't exactly know how to answer this in any simple fashion. The radio station has a duty to—

Mr. Howard: I'm sorry, but, I am going to exclude the answer given, the question is not one that is put on direct examination, it calls for conclusion, it is argumentative, and I don't believe,—I think it is immaterial as to the issue as between—as to exactly the legal point we are trying to try here.

The Court: Overruled.

A. Does this mean I try to describe what the purpose of a radio station is?

Q. I'll ask you another way. The purpose is to make money, isn't it?

A. As a business now, this is its purpose. But, as I started to say before that. And, this is to me a vitally important part of the purpose of a radio station; it has certain obligations in its license to the FCC that must be honored and followed daily, weekly, monthly and yearly.

Q. Do you know what those are?

A. I can't say I know what all of them are. I know what the basic—too much writing to all of them.

Q. This is policy established by Federal Communications Commission?

A. Yes, sir.

Q. And, Mr. Holt doesn't establish that policy?

A. Right. It is a Federal Communications Commission policy. Now, beyond—

Q. Go ahead.

A. Just the other part of what you asked. The object of any business to try and make money.

Q. You do it through sales?

A. Absolutely.

Q. And, that is what Mr. Holt talked about, was sales primarily?

A. That is what Mr. Holt always talks about.

Q. Yes, sir. So, so far as the policy of making money, he set that, didn't he?

[fol. 119] Mr. Darby: I object. That calls for a conclusion. You can say what the man said or what he did. The Court will determine whether or not that was the policy that was set.

The Court: Overruled.

A. Which means what, sir?

Q. I said, so far as the business policy of selling, Mr. Holt was vitally interested in that and talked about it constantly, didn't he?

A. Well, now, let me repeat what I said in answer to that question. He, Mr. Holt, talked in general terms continually. There was no, I don't recall specific instances of policy setting per se. He talked about how a man could make a living as a salesman, how to operate a radio station, how a business was run, how a radio station should be handled. "If you boys want to be successful you do it this way." Not in specific terms; any policy, as I say, anything that was said on this nature, I was more or less on my own.

Q. The Policy is the general terms of how to conduct this particular—how he wanted this business conducted, was it not?

A. Well, now, I didn't discuss this with Mr. Holt.

Q. You didn't discuss how he wanted WSIM conducted?

A. No, Mr. Robinson is the man that I talked with on this thing. I think we said this earlier.

Q. Well, Mr. Holt was always talking about how you were going to make money with this radio station, wasn't he?

A. As applied to every station; as applied to this station or any other station in town. How a person could be a success; this sort of thing. I don't know how to emphasize that—

Q. All right. What was the volume of business—how long were you at WSIM?

A. From August 1st to the first part of January, approximately six months.

Q. What was the volume of sales for December, 1962, at WSIM?

A. For December?

Q. Yes.

A. I don't recall exactly, but it was in the vicinity of $5,000.00. You said December of 1963?

Q. Yes, sir. That was the last month, full month, you were Manager of the station?

[fol. 120] A. Right.

Q. About $5,000.00?

A. To give you an exact answer I would have to look that up.

Q. That was for the month of December?

A. Advertising that ran and was billed for in the month of December which is—that was the figure, the total amount of advertising that ran.

The Court: December of what year, please?

A. 1962.

The Court: Thank you.

Q. Now, you remember making an affidavit in this case for Mr. Howard or Mr. Darby, do you not, concerning the volume of business done by WSIM?

A. Yes, sir.

Q. And, that was made back in September?

A. Yes, sir.

Q. At that time, do you remember for the month of September what the volume of business at WSIM was for the month?

A. In the vicinity of $3,000.00.

Q. Three thousand.

A. Here again, these figures are not exact; I would have to look at the records, the books.

Q. You brought the business up then from September through December from $3,000.00 a month to $5,000.00 a month?

A. Approximately.

Q. You knew what the monthly sales were at WHHY in Montgomery also, did you not?

Mr. Darby: I object. The records would be the best evidence of what they were up there. The man wasn't even there during this period of time.

Mr. Goldthwaite: He knows.

Mr. Darby: The records would be the best evidence. It is not a question of a man knowing what the records say, anybody might know, the law is the records in such cases are the best evidence.

Mr. Pelham: If they are available, Your Honor.

Mr. Darby: They haven't subpoenaed—

(Here occurs oral argument of counsel.)

The Court: I overrule the objection.

[fol. 121] A. What was the question?

The Court: Do you know what the sales were in Montgomery?

Mr. Goldthwaite: At the time you left there in August of 1962?

A. Sales through that period of time, August through December?

Q. No. No, before you left Montgomery. During the last month you were in Montgomery as Assistant Station Manager.

A. Yes, sir.

Q. What were the monthly sales in Montgomery?

A. We are getting further back in time now. Specific month or an average or how do you want that?

Q. In July of 1962, the last month when you were Assistant Station Manager?

A. Now, here I might be off a couple of thousand dollars, but it seems to me it was seventeen thousand, sixteen thousand or something of the sort.

Q. How about for June. Do you remember it was about the same range in June of 1962?

A. Yes, sir.

Q. Do you know what the total sales for station WHHY in Montgomery, was the station on a calendar year or fiscal year basis?

A. I am not sure. I believe it was on a calendar year.

Q. Do you know what the total sales of advertising during the last calendar year you were there were?

A. I can give you an estimate.

Mr. Darby: Objection. May it please the Court, the records are the best evidence and this man wants to give an estimate to a matter that might be of fundamental importance, and I don't think the Court would want to rule on guesses of evidence.

The Court: Sustained.

Mr. Goldthwaite: I don't want an estimate. I want in your recollection the best you recall, sir.

A. I don't know other than an estimate, because, as I say my estimate I gave you for August might be two thousand dollars off. For July, I mean.

Q. But, you know in round figures how much the sales were for the year at that station?

A. An estimate, and I would have to multiply my esti- [fol. 122] mate by twelve to give you that figure. No, sir, I did not see an end of the year report if that is what you mean.

Q. Yes, sir. But, you know the general volume of business was over $15,000.00 a month? You know station WHHY was doing a volume of business of over $15,000.00 a month?

A. Not every month.

Q. Not every month?

A. No, sir.

Q. Most months?

A. In 1962, yes, sir.

Q. 1961 also?

A. No, sir. Not in 1961. I don't recall specifically back beyond that.

Q. Did you have any—you had a conversation with Mr. Holt about the Holt Broadcasting Service, what did he call it? The Holt—what did he call it? Sir?

A. Are you referring to this phrase we talked about on the air?

Q. Yes.

A. Holt Broadcasting Service, I believe. That sounds right, Holt Broadcasting Service or Holt Broadcasting—I believe that is it, The Holt Broadcasting Service.

Q. What was the conversation you had with him about that?

A. I don't remember it.

Q. You don't remember the conversation?

A. Other—when I told you he said, "do it"?

Q. Yes, what did he tell you to do.

A. That was it, there was no conversation.

Q. What did he tell you to do?

A. He said, "Let's periodically put my name on this thing, let's say it's the Holt Broadcasting Service." I think he had heard it in New Orleans and he liked the idea.

Q. Sir?

A. I said I think he heard it in New Orleans and he liked the idea.

Q. Liked the idea. That was sort of a policy matter, wasn't it?

Mr. Darby: Objection, calls for a conclusion.

Q. OK. When did you leave WSIM?

A. In the first part of January, 1963.

Q. Were you—where did you go when you left?

[fol. 123] A. To WHHY in Montgomery.

Q. You went back to WHHY?

A. Yes, sir.

Q. What did you do there?

A. I was salesman.

Q. How long did you stay there?
A. Until April 1st of 1963.
Q. Where are you now?
A. At WFMI.
Q. Where?
A. WFMI in Montgomery.
Q. Mr. Holt or Mr. Robinson have anything to do with WSMI?
A. No, sir. As far as I know they don't.
Q. Mr. Robinson was still running WHHY when you went back?
A. Yes, sir.
Q. You didn't go back as Assistant Manager?
A. No, sir.
Q. Were you an officer of the corporation, Broadcast Service of Mobile, Inc.?
A. No, sir.
Q. Do you know—but, you were general manager?
A. Yes, sir.
Q. Do you know who—in that capacity, you knew who the officers of the corporation were?
A. I knew that Bob Robinson and Mr. Holt, and I understand there is a third one which is necessary to be a corporation, something of that sort, but I don't know who the third party is.
Q. Connie Holt, Charlie Holt's wife.
A. Connie Holt, I did know that.
Q. You knew that?
A. Yes, sir.
Q. She's Charlie Holt's wife?
A. Right.
Q. You have met Connie Holt?
A. Yes, sir. I know Mrs. Holt.
Q. You knew she was a minority stockholder in the station?
A. No, sir. I didn't. I knew the three of them had stock, now, I don't know how it was broken up.
Q. Robinson and Charlie Holt and Connie Holt own all [fol. 124] of the stock in WSIM?
A. As far as I know, yes, sir.

Q. All right. What was Charlie's title? President of Radio Broadcast Service of Mobile?

A. Sir, I don't recall. I am sure we had it on our notice of application for corporation or whatever this called, but I don't recall what his title was.

Q. You don't remember whether it was President?

A. No, sir.

Q. Chairman of the Board?

A. I don't have any idea.

Q. How about Robinson, he was Vice President of the station?

A. I don't know that either. It is on our records and I'll be glad to check, but I don't remember.

Q. You knew that the three of them also owned WHHY in Montgomery?

A. I did not know that Connie Holt owned any share of stock at WHHY, no, sir.

Q. You thought that Charlie Holt and Robinson were the only owners of that station?

Mr. Howard: I am going to object and ask the Court that he please not lead the witness quite so much.

The Court: Sustained.

Q. What was your knowledge as to who the owners of station WHHY were?

A. WHHY?

Q. Yes.

A. Well, now, this is the one we just talked about.

Q. That's right.

A. Bob Robinson and Charlie Holt, and I knew there had to be a third one, but I did not know it was Connie Holt.

Q. Do you know the offices that Charlie Holt held and Robinson held and Lightsey held, their job titles or offices of the corporation in Montgomery, Broadcast Service of Montgomery?

A. No, sir. On the same basis we discussed before, I don't remember what the titles were.

Q. If you wanted any advice as to record keeping of the Company, to whom did you go?—financial records?

Mr. Darby: I object unless it is shown that he went to [fol. 125] somebody. He is assuming that the man went. He said, "If he wanted—he hasn't established that he ever wanted any.

Mr. Goldthwaite: The Manager would know.

The Court: Overruled.

A. If I wanted record information?

Q. Advice.

A. Advice. To Stan Lightsey normally. It would depend on what it was, Bob Robinson in most cases on most of everything that I wanted to discuss. If it got involved then to Stan Lightsey.

Q. If it got involved then to Stan Lightsey?

A. By involved, a matter of record, something that had gone past, months before or had to be exact, this sort of thing. Then, Stan Lightsey, yes, sir.

Q. You got general policy advice from Mr. Robinson and detailed financial advice from Mr. Lightsey?

A. Advice, no, sir. I got this from Mr. Robinson.

Q. Mr. Lightsey didn't give you any instructions as to how he wanted the bookkeeping of the station kept?

A. I was trying to recal if it was necessary and how this thing was set up. No, sir. I don't recall—anything that I had to ask of this nature, I always asked Bo'

Q. How many times did Mr. Lightsey come in during the six months you were Manager of WSIM?

A. Probably twice monthly.

Q. Twice monthly. What did he do when he was here?

A. Tried to collect some money.

Q. Tried to collect money?

A. Past due accounts.

Q. Did he look at the books?

A. Yes, sir.

Q. Did you have any conversation with him about books?

A. No, sir. Other than just the delinquent accounts.

Q. You didn't have any conversation about the way, the manner, in which the books were kept at any time?

A. No, sir. Well, possibly.

Q. Sir?

A. Possibly.

Q. Did you or didn't you?

[fol. 126] A. I don't recall a specific instance, no, sir. But, if we had made a mistake he might have corrected this mistake some way. I don't recall having asked, no, sir.

Q. Who signed the checks for station WSIM?

A. Charlie Holt.

Q. Charlie Holt.

A. Yes, sir.

Q. Who else?

A. And, Mr. Lightsey.

Q. Holt and Lightsey?

A. Yes, sir.

Q. Their titles appeared on the checks, didn't they?

A. I believe so.

Q. Charlie Holt, President, Stan Lightsey, Treasurer, Radio Broadcast Service of Mobile?

A. I don't recall. They could, but I don't recall whether they did or not.

Q. The two of them signed the checks when you were Manager of WSIM?

A. They did sign them and at times Mr. Lightsey did not sign them.

Q. Either one of them could sign them?

A. No.

Q. Sir?

A. No, sir. Mr. Holt could sign them or both of them could sign them.

Q. Holt's name had to be on them?

A. Right.

Q. How about WHHY in Montgomery?

A. Who signed the checks?

Q. Yes.

A. Mr. Holt and Mr. Robinson.

Q. Mr. Lightsey sign those checks?

A. No, sir.

Q. Mr. Lightsey didn't have to sign the Montgomery checks?

A. No, sir.

Q. Could he sign the Montgomery checks?

Mr. Darby: Objection to what he could have done.

[fol. 127] A. I don't know.

Q. Could Mr. Robinson sign the Montgomery checks alone?

A. I don't know, sir.

Q. All checks you saw from the Montgomery station, both their signatures were on them?

A. Yes, sir.

Q. Where—when you worked for the Montgomery station, were you on salary or how were you paid?

A. I was on salary and commission.

Q. How were you paid?

A. Twice monthly.

Q. Cash or by check?

A. By check.

Q. Where did the check come from, Hattiesburg?

A. Where was it made out?

Q. Did you get it in the mail?

A. Mr. Robinson passed them out.

Q. Where were they made out?

A. In Hattiesburg.

Q. In Hattiesburg. And, they were mailed to Mr. Robinson?

A. Yes, sir.

Q. And, he passed them out to the employees?

A. Right.

Q. In Mobile, where were the payroll checks made out?

A. In Hattiesburg.

Q. In Hattiesburg. They were mailed to you as Station Manager?

A. Yes, sir.

Q. Did you ever go to Hattiesburg?

A. While I was in Mobile?

Q. Yes.

A. No, sir.

Q. As Station Manager of WSIM?

A. No, sir.

Q. Did you ever go to Hattiesburg while you were Assistant Manager of WHHY in Montgomery?

A. No, sir.

Q. Never did?

A. No, sir.

[fol. 128] Q. Did you go there prior to the time you became Assistant Manager?

A. I passed through there once.

Q. Did you stop and see Mr. Holt?

A. Yes, sir.

Q. Where was his office?

A. The physical location of the building?

Q. Yes. Where was his office located?

A. It was on a highway going into Hattiesburg.

Q. Was it at Station WHSY?

A. At WHSY, yes, sir.

Q. Did you see Mr. Lightsey while you were there on that occasion?

A. No, sir.

Q. Was Holt already in Hattiesburg when you went to work for him? He didn't live in Montgomery?

A. No, sir.

Mr. Darby: I object. There is no testimony that this man went to work for Mr. Holt, the testimony is he worked for the corporation.

The Court: I sustain that.

Mr. Goldthwaite: Where did you work before you went with WHHY?

A. At WHXY in Bogaloosa, Louisiana.

Q. At WHXY. Was that one of Charlie Holt's stations, too?

A. I think he had some stock in it.

Q. Did Mr. Robinson have anything to do with that station?

A. I don't believe so.

Q. Did you know Mr. Holt while you worked for that station personally? Were you personally acquainted with him?

A. Yes, sir.

Q. Did he come over to that station from time to time?

A. I think I saw him once while I was there, maybe twice.

Q. How long were you there?

A. About six months.

Q. Did he sell the station while you were working there?

Mr. Darby: Objection. It's not shown he ever sold it, he didn't own it.

The Court: Sustained.

[fol. 129] Mr. Goldthwaite: Was there a sale of the station while you were working there?

A. No, sir.

Q. Who directed you to go to Montgomery from Bogaloosa?

Mr. Darby: Objection. There is no testimony that anyone directed him.

The Court: Sustained.

Mr. Goldthwaite: Did anyone direct you to change your job from Bogaloosa to Montgomery?

A. No, sir.

Q. How did you happen to go to Montgomery?

A. Bob Robinson called me on the phone one day and asked me if I would like to go to work for him in Montgomery.

Q. Did he say anything about Holt in that conversation?

A. No, sir.

Q. How many employees did you have at WSIM?

A. Six to eight.

Q. Six to eight. Who were they?

A. Now, which—these change. What period of time?

Q. When you first—

A. When we went on the air?

Q. Yes. When you first went on the air.

A. Carolyn Hill, Jim Carlisle.

Q. What was Hill's job?

A. She was general office, clerical, secretary to handle all the office's work.

Q. Typist and stenographer?

A. Not stenographer, just to handle traffic, billing, everything that was connected with the office itself.

Q. Carlisle, what was his job?

A. Program director and announcer.

Q. Who else?
A. Keith Glatzer.
Q. Spell that.
A. G L A T Z E R, I believe.
Q. What was his job?
A. Announcer.
Q. Who else?
A. Earl Bryan or Clinton Bryan.
[fol. 130] Q. Who else—what was his job?
A. He was Engineer. And, myself.
Q. Any others?
A. At that time, Herb Johnson.
Q. Who was he?
A. He was a salesman. I believe we might have had a part-time announcer at that time. We did for a week or two and then we didn't. I don't recall his name.
Q. Where did Carolyn Hill come from?
A. In Mobile, or Prichard.
Q. Who employed her?
A. I did.
Q. Did you discuss that with Mr. Holt?
A. No, sir.
Q. Discuss it with Mr. Robinson?
A. No, sir. Well, yes, I discussed it with Mr. Robinson.
Q. He instructed you to employ a secretary?
A. No, sir.
Q. What happened?
A. I just told him I wanted to talk with Miss Hill about employing, I would or had or something, talked with Miss Hill about employing her. And, he said, "Fine." There was not a discussion.
Q. Had you previously discussed with Mr. Robinson what your needs for employing at WSIM would be?
A. Yes, sir.
Q. Had you discussed it with Mr. Holt?
A. No, sir.
Q. You didn't discuss your needs for employees with Mr. Holt?
A. No, sir.
Q. Where did Carlisle come from?
A. He had been working for WHHY—

Q. In Montgomery?
A. —in Montgomery for a few months.
Q. Who told him to come to Mobile?
A. I did.
Q. You did. Did you—who did you discuss that with before you told him to come down?
A. I probably discussed it with him first and asked him [fol. 131] if he would like to. And, when he indicated he would then I discussed it with Bob Robinson.
Q. Did you discuss it with Mr. Holt?
A. No, sir.
Q. Do you know if Mr. Robinson discussed it with Holt?
A. I don't know.
Q. Sir?
A. I don't know.
Q. Where did Glatzer come from?
A. From in Arkansas. I don't remember the city.
Q. Who hired him?
A. I did.
Q. You did. Did you discuss that with Mr. Robinson before you did it?
A. No, sir. Now, I don't recall where his name came from; I don't know who put me in touch with him. I discussed it with somebody I don't remember—it might have been an announcer at the station. But, I talked with him and I hired him, and I don't remember any other conversation about it.
Q. You had discussed with Mr. Holt the need to have an announcer, did you not?
A. Mr. Holt?
Q. Uh-huh.
A. No, sir.
Q. Or, with Mr. Robinson.
A. Other than the fact that what our staff should consist of, we didn't.
Q. Where did Bryan come from?
A. From Montgomery.
Q. From Montgomery?
A. Right.
Q. Did he work at WHHY?
A. No, sir.

Q. Stevenson was here the first week you operated WSIN in August of '62, wasn't he?

A. Yes, sir.

Q. And, the end of that week he went back to WHHY?

A. Yes, sir.

Q. And, Bryan came to WSIN?

[fol. 132] A. Right.

Q. Did you employ Bryan yourself?

A. Yes, sir. Actually, I asked Bob if he would.

Q. Robinson?

A. Robinson, if he would employ him.

Q. Employ who? An Engineer?

A. I don't remember now whether we had discussed Bryan or not.

Q. It was discussed before he was employed?

A. The particular person, I don't remember whether I asked about him or just—

Q. Told them to get you an engineer.

A. —get me an engineer. I don't recall.

Q. But, he did employ him and send him down?

A. He sent him down and I employed him.

Q. Where did Johnson come from?

A. Here in Mobile.

Q. Was he working for WAIP prior to—

A. Not immediately prior, no, sir. He had in the past worked for WAIP.

Q. As Assistant Manager in Montgomery, did you have anything to do with employing personel at WHHY?

A. Not directly. Not directly.

Q. What do you mean by "not directly." What did you have to do with it?

A. Other than be consulted or consult with Robinson on any changes that might be made, and this was a courtesy, I think.

Q. Can you name the people that worked for WHHY at the time you left there?

A. I can try. I don't think I remember all of them.

Q. Start with Mr. Robinson and you.

A. Mr. Robinson and myself, two girls in the office.

Q. Two girls?

A. Would you like their names?

Q. Not necessarily. What were their jobs?

A. One handled traffic, copywriting and all related duties of that. The other one did posting, billing, secretarial work.

Q. Where did those two girls come from. Were they both Montgomery girls?

[fol. 133] A. They had both been in Montgomery several years. I don't know whether their home was Montgomery or not.

Q. Were either of them transferred from the station at Hattiesburg or the station at McComb to Montgomery?

Mr. Howard: I'm going to object to using the word "transferred". A transfer implies that these stations were all part of a chain, there is no establishment of a chain, we expect to show in fact there was no chain as such. And the word, "transfer" completely is misleading in that since. If they went from one corporation to another that is one thing, but a transfer is like being transferred from Brookley Air Force Base to Maxwell Air Force Base in Montgomery and is all part of the United States Air Force. When you leave one corporation and you are terminated there and you go to another corporation, that is two separate affairs.

The Court: Sustained.

Mr. Goldthwaite: Did either of these two girls work for the radio station in Hattiesburg or the radio station in McComb before they worked for WHHY?

A. No, sir.

Q. All right. Name the next one.

A. The engineer, Walter Stevenson.

Q. How long—was he there when you went to work at WHHY?

A. Yes, sir. And, I don't know how long before that time.

Q. All right. Who's next?

A. There were two part time or weekend engineers. I don't recall their names. Then, in the announcing staff, I don't recall. Ken Scott, and we had another full time announcer. I don't recall who it was and a part time announcer. Probably two part time announcers, and I don't recall their names either.

Q. What was Scott, Program Director?

A. Yes, sir.

Q. And, Carlisle—

A. Oh, Carlisle.

Q. What was his job?

A. He was the announcer, he was the other full time announcer.

Q. Was Scott there when you went to work there?

A. No, sir.

Q. Where did he come from?

[fol. 134] He had been employed from a station in Tuscaloosa, I believe, or Tuskegee possibly; I am not certain of that.

Q. Do you know who employed him?

A. The Sales Manager of the time of this employment.

Q. Who was he?

A. Bill Stewart.

Q. Bill Stewart?

A. Yes, sir.

Q. Is he there now?

A. No, sir.

Q. Where is he now?

A. He is with another radio station in Montgomery.

Q. All right. Either of these two part time announcers work for the Hattiesburg or the McComb station prior to working in—

A. Since I don't remember their names, this is going to sound like—I know they didn't. They were local boys, I don't remember who they were.

Q. How about Carlisle?

A. Carlisle came from somewhere in Georgia. Columbus, I believe.

Q. Who else worked for WHHY at the time you left?

A. At the time I left?

Q. Yes.

A. Now, there has been a change in announcers and there again, I don't recall the names.

Q. How about sales?

A. Oh, I left off salesmen. It was Paul Dunaway, Hamp Bently, Bill Johnson and Don Givens.

Q. Givens. Is he the present station manager of WSIN?

A. Yes, sir.

Q. Dunaway, where did he work before he came to WHHY?

A. A radio station in Taladega.

Q. How about Bently?

A. He had—I don't know where he was employed immediately prior to coming to WHHY, but, a few months before that he was employed by a local television station.

Q. In Montgomery?

A. Yes, sir.

Q. What about Johnson?

[fol. 135] A. Johnson had been selling for a radio station at Weetumpka about twenty miles from Montgomery.

Q. You brought Johnson to Mobile with you, or did he come down afterwards?

A. Johnson?

Q. Uh-huh.

A. He's never been in Mobile.

Q. Is that a different Johnson?

A. Herb Johnson, right. He is a Mobile man.

Q. When did Givens come down from Montgomery?

A. I believe in about the middle of September. In that area, I don't remember the date.

Q. In what capacity did he come to Mobile?

A. As my assistant, salesman, sales manager, no specific title; just my assistant and as a salesman.

Q. Who sent him to Montgomery, do you know—I mean to Mobile?

A. I asked for him.

Q. Whom did you ask?

A. I asked if he would like to come; I asked him continually and then he agreed that he might and then I talked to Bob or he talked to Bob, I don't remember which one of us went to Bob.

Q. Mr. Robinson?

A. Mr. Robinson, I'm sorry. I don't remember how the discussions went there, but I wanted Don down here and we did whatever was necessary to terminate his employment there and employ him here at WSIN.

Q. Did either of you talk to Mr. Holt about that?

A. No, sir. Well, either of us—I didn't. And, as far as I know Bob didn't.

Q. Or Mr. Givens?

A. Nor Mr. Givens.

Q. During the five years you were at WHHY, do you recall any employees being transferred,—leaving there and going to work at either Hattiesburg or McComb?

Mr. Howard: I am going to object again to the term "transferred".

The Court: On the same grounds?

Mr. Goldthwaite: I changed it—left there and went to work at either Hattiesburg or McComb?

A. Nobody to the best of my recollection left WHHY [fol. 136] and went to either of those stations.

Q. From time to time did the employees from Mississippi come to help you at WHHY?

A. I don't recall ever having anyone.

Q. Engineers?

A. Possibly, I don't remember this, possibly on moving a transmitter at one time. I don't recall this took place—

Q. It could have happened?

Mr. Darby: I object to what could have happened; most anything could have happened.

The Court: Sustained.

Mr. Goldthwaite: Mr. Hale,—Judge, is the original complaint here where I can—

The Court: The original complaint will be in one of those files over there.

Q. Mr. Hale I show you what purports to be the original bill in case No. 58,568-H in the Circuit Court of Mobile County and ask if you have ever seen that document previously?

A. Sir, I don't know. I have seen so many legal papers in the last few months that I don't recall whether I have seen this or not.

Q. At the time this suit was filed, did you discuss it with Mr. Lightsey?

A. At the time the suit was filed. Yes, sir.

Q. You did? Mr. Lightsey came from McComb, I mean, from Hattiesburg to Mobile for the purpose of filing this suit or on some other business?

Mr. Darby: I object to what the purpose he came for. It is irrelevant, the purpose is the state of his own mind as to why he came.

The Court: Sustained.

Mr. Goldthwaite: Did Mr. Lightsey come to Mobile at the time this suit was filed?

A. Yes, sir. He was here generally at that time. I don't recall the dates.

Q. At that time, did you go to Mr. Howard's office with Mr. Lightsey?

A. Yes, sir.

Q. You did?

A. Yes, sir. Again, during this period of time. I don't recall the dates involved.

[fol. 137] Q. You remember when the suit was filed in this Court, don't you?

A. The period of time, yes, sir.

Q. Mr.—

A. Is this the time we had the hearing that took place before?

Q. Before that.

A. Before that. There again, just the period of time.

Q. You remember going to Mr. Howard's office with Mr. Lightsey and discussing filing this suit?

Mr. Darby: Objection. It is irrelevant whether the people discussed filing suit with their lawyers, they are bound to have done that and that's not relevant on the issues—

Q. What did Mr. Lightsey have to do with it?

The Court: Overruled.

A. Sir, I am not real sure. I remember these things—being at the time you are talking about. But, I don't know exactly what part he had to do with it.

Q. Do you remember talking to him about the things that these union boys had done, how they were picketing and contacting your customers?

A. Yes, sir.

Q. And, you went to Mr. Howard's office and discussed that with Mr. Howard, didn't you?

A. Yes, sir.

Q. And, you talked to Mr. Lightsey and you discussed it with him, didn't you?

A. Yes, sir.

Q. And, the two of you went to Mr. Howard's office together and—

Mr. Howard: I am going to object. We are not on cross-examination and he is continually leading—

Mr. Goldthwaite: The witness is obviously hostile and I think it is within the voracity of the Court to give me the lattitude to try to get the truth of him.

Mr. Howard: Any conversation between Mr. Hale and myself, of course, is privileged, the conversation as between attorney and client.

Mr. Goldthwaite: I am not going to ask anything he told him, Your Honor.

Mr. Pelham: Your Honor, by that statement, he just established right of him to ask leading questions. The leading question—

[fol. 138] (Here occurs oral argument of Counsel.)

The Court: The court overrules the objection.

Mr. Goldthwaite: You did go to Mr. Howard's office with Mr. Lightsey?

A. Yes, sir.

Q. How many times did you go to Mr. Howard's office with Mr. Lightsey to discuss filing this suit?

A. I don't recall.

Mr. Darby: May it please the Court, when he said "to discuss filing this suit" he is going into what was said,—

Mr. Goldthwaite: No, I am not.

Mr. Darby: —that the subject matter wasn't there. We submit that in Alabama, it is established that a—

(Here occurs oral argument of Counsel.)

Mr. Darby: Moreover, it is not relevant to any issue before the Court here.

The Court: I sustain the last objection.

Mr. Goldthwaite: On how many occasions did you go to Mr. Howard's office with Mr. Lightsey?

A. I don't recall other than the one trip that you asked about. And, I don't remember whether I went again or not.

Q. Do you recognize the signature on Page 5 of the original complaint, Carl S. Lightsey?

A. Do I recognize the signature?

Q. Yes.

A. No, sir. I don't. The name yes.

Q. You got the payroll checks from this man for five and a half years

Mr. Darby: We will stipulate that that is Mr. Lightsey's signature if that is what he wants to establish. The man is not a handwriting expert and the question is not relevant whether he recognizes Mr. Lightsey's signature.

The Court: Overruled.

Mr. Goldthwaite: You got your payroll check signed by Mr. Lightsey for five and a half years, didn't you, Mr. Hale?

A. Right.

Q. Don't you recognize that signature there?

A. No, sir. Because to the best of my recollection the checks were not signed like this.

[fol. 139] Q. Signed differently?

A. To the best of my knowledge. I don't recognize that.

Q. As being Mr. Lightsey's signature?

A. No, sir.

Q. Were you present at the time Mr. Lightsey signed the original complaint?

Mr. Darby: Objection. There is no testimony if he is going into that that Mr. Lightsey did sign it. We will stipulate that Mr. Lightsey signed it; it was filed by the corporation. His question is irrelevant as to whether he was present or not when Mr. Lightsey signed it.

The Court: Overruled.

Mr. Goldthwaite: When did you first go—you and Mr. Lightsey go to Mr. Howard's—

Mr. Darby: Now, I object now to not letting the witness answer the question if he is going to ask it. Your Honor overruled the objection.

The Court: Were you present when the original complaint was signed?

A. I don't recall, sir; whether this was the time I was there or not.

Mr. Goldthwaite: You don't remember how many times you went with—

A. The one time when Mr. Lightsey was there. I don't remember ever being with the three of us together again in the office.

Q. Do you remember what day that was?

A. No, sir.

Q. Now, having looked at this, does it refresh your recollection as to whether you had read it previously?

A. Yes, sir. I have read it.

Q. You have read it?

A. Yes, sir.

Q. Recites that Mr. Lightsey is Treasurer of Broadcast Service of Mobile, is that right?

A. Yes, sir.

Q. Is that correct, to your knowledge?

A. As I said, I didn't remember the title other than the fact that it says it there, I still don't exactly what the title would be.

Q. Now, on Page 2 of the original bill recites that Your [fol. 140] Complainant further alleges that the present staff engineer on duty with radio station WSIM is an employee from another station owned by Your Complainant and is not a permanent employee or a resident employee of the new station. Now, who was that employee? Is that Mr. Stevenson?

A. If it is not him I don't know who it would be. It must be Mr. Stevenson.

Q. Did you have another employee on loan from one of the four stations that was acting as an engineer?

A. To the best of my knowledge we did not. H was the one.

Q. He's the only one that you know of?

A. Yes, sir.

Q. He wasn't here on August 31st, was he?

A. I don't think so, probably two weeks, a week or ten days or something.

Q. The bill further recites on Page 2 that Your Complainant submits to the Court that on Friday, August 10th, 1962, the President of Your Complainant, Charles Holt conferred with one of the unions interested in collective bargaining with Complainant Corporation and made an appointment with representative of the Union for August 13th, 1962. to be held in the law office of Stone and Howard in the First National Bank Building in Mobile. Do you know anything about that?

A. No, sir.

Q. Were you present at the time Mr. Holt made an appointment?

A. No, sir.

Q. Were you present for the appointment on August 13th in Mr. Howard's office?

A. No, sir.

Q. Did Mr. Holt discuss that meeting with you after it was held?

A. No, sir. I don't recall Mr. Holt discussing that meeting, as I say so many things were happening at that period of time. I didn't discuss it.

Q. Do you recall Mr. Holt coming to town on or about August 10th, 1962,—August 13th?

A. No, sir. There again, he was in and out.

Q. Do you recall him going to a meeting at Mr. Howard's office?

A. No, sir.

Q. Do you recall giving you any instructions about the hiring of David Fridge by WSIM and stating that these instructions were given as a result of a meeting with the Union?

[fol. 141] A. No, sir.

Q. Did Mr. Holt give you any instructions about hiring Dave Fridge or not hiring him?

A. I don't recall Mr. Holt giving me instructions in the matter.

Q. Who gave you instructions about whether to hire Dave or not?

Mr. Darby: Objection, there is no evidence that anybody gave him such instructions.

The Court: Sustained.

Mr. Goldthwaite: Did you get any instructions about hiring Dave?

A. I don't think there were any instructions as such. Probably I discussed it with Bob Robinson, but no instructions that I recall.

Q. You did discuss it with him?

A. With Bob Robinson?

Q. Yes.

A. Yes, sir.

Q. And, it was decided that you would not employ him, is that right?

A. I don't know whether it was decided before I discussed it with him or afterwards. To the best of my recollection it was decided on August 1st before I ever talked to Bob Robinson. Here again, dates I don't remember. Period of a day or two I can't recall.

Q. It had been decided on August 1st before you talked to Fridge about working for WSIM?

A. Yes, sir.

Q. Where was that decision made, in Montgomery?

A. The overall—that particular decision I imagine was made with me in Mobile.

Q. With you?

A. Right.

Q. You and who else, Mr. Robinson?

A. No, with me. I did it in our office, but predicated on the fact that there were no employees to be carried over from WAIP to WSIM. In other words, there was no agreement to that.

Q. Miss Hill was carried over—

A. No, I employed her.

Q. You could have employed Fridge as engineer?

A. Yes.

[fol. 142] Q. But you discussed it with Mr. Robinson and y'all decided not to, didn't you Isn't that correct?

Mr. Darby: He is leading the witness again, and it is contrary to what the witness has already testified to.

Mr. Goldthwaite: Well, did you discuss it with Mr. Robinson in making this decision as to whether or not to hire Fridge?

A. I discussed it with him, and I am sorry, I don't remember whether I had made the decision before or after—I don't know whether I made the decision or whether Bob agreed with my decision or he made it and I agreed with him. I don't recall.

Q. But, you did confer with him before the decision was made?

A. I don't know, sir. Either before or after or during. I don't recall which came first.

Q. Did he confer with Mr. Holt or state to you that he was going to confer with Holt about what to do about hiring an engineer for WSIM?

A. No, sir. He didn't—or, he didn't confer with me about it, and I don't know whether he conferred with Mr. Holt.

Mr. Goldthwaite: I think he is with you.

Mr. Howard: Is that all?

Mr. Goldthwaite: Yes, sir.

On cross examination.

By Mr. Howard:

Q. Mr. Hale, we are talking about Mr. David Fridge. Did you want to hire Mr. Fridge?

Mr. Pelham: I object to that, Your Honor. That calls for an uncommunicated mental condition, "Did you want to hire Mr. Fridge?"

The Court: Overruled.

Mr. Pelham: I except.

Mr. Howard: Did you want Mr. Fridge?

A. No, sir.

Q. Would you tell us why not, please, sir.

A. Uh—

Mr. Goldthwaite: Your Honor, I don't think his reasons are material.

Mr. Pelham: I object to that on the same grounds, he is telling this gentleman to give testimony as to his mental operations; why he didn't do something. Your Honor, the law excludes that because you can't possibly cross-examine on it.

[fol. 143] The Court: Overruled.

Mr. Howard: Will you answer the question.

A. Two or three things involved, the basic and very good reason was that I was not happy with the way the radio station looked or had been operated.

Q. All right, sir. How did the radio station look?

A. Dirty, out of place.

Mr. Pelham: Your Honor, object to this. The question that Your Honor allowed was why he didn't hire Fridge. There is no showing that Fridge had anything to do with the dirty radio station.

Mr. Howard: We expect to tie that in, Your Honor.

The Court: Overruled.

Mr. Howard: I'll re-phrase my question.

Mr. Pelham: If he re-phrases his question, I move to exclude the answer that he gave to the question he's necessarily withdrawn.

The Court: All right. I'll grant your motion.

Mr. Howard: All right. Mr. Hale, what was the condition of the equipment under the care of the Chief Engineer at WAIP, Mr. David Fridge?

A. As far as I could determine, it was in very bad shape. Much of it—

Mr. Pelham: Your Honor please, I am going to have to object to that unless he establishes that Mr. David Fridge was Chief Engineer at WAIP.

Mr. Howard: They allege it—

Mr. Darby: They allege it in their answer, Your Honor. Now, perhaps, they are going to change it.

Mr. Goldthwaite: I don't know that it is. It is immaterial anyway whether he was Chief or anything else. He was Engineer over there, that only had one.

Mr. Pelham: I withdraw my objection if they only had one.

Mr. Howard: Go ahead, Mr. Hale.

A. As far as we were able to determine between myself and the announcers we had to work the equipment, much of it was inoperable. Not only out of working order but the people who had to work with it were hampered because

of the bad way it was connected, hooked up. I don't know how much further to describe it. It was not what I wanted in a radio station as far as equipment.

[fol. 144] Q. Now, have you ever on any occasion seen comparable, equipment in comparable shape anywhere else while you have been broadcasting?

Mr. Pelham: Your Honor, I object. It is irrelevant and immaterial, in the trial of this case.

Mr. Goldthwaite: There is no indictment on—

The Court: Sustained.

Mr. Howard: All right. Now, Mr. Hale, how long have you been in radio broadcasting? How many years?

A. Eight, ten years.

Q. All right. Now, do you know whether any agency of the Government has treated these stations in Montgomery and Mobile or any other stations as a group for any purpose?

A. I don't know of any.

Mr. Goldthwaite: Your Honor, I would like to move that this question and answer be stricken. If an Agency treated with it, it would be a matter of record and I think the record would be more competent evidence. For example, the application of Mr. Holt by this station is available to them and could be put in evidence. It is not available to us.

The Court: Overruled.

Mr. Darby: I would repute Counsel's last statement—that the records are on file with Federal Communications Commission down there and are published records and are available to the public including his union with the Headquarters in Washington, D. C.

Mr. Howard: He overruled the objection, answer the question.

A. Which was that?

Mr. Goldthwaite: He already has answered it.

Mr. Howard: Now, Mr. Hale, who did the hiring and firing of employees at WSIM while you were there?

A. I did.

Q. Anybody else hire or fire anybody while you were there?

A. No, sir.

Q. Who made the decisions about to hire or to fire?

A. I did.

Q. Who set the scale of wages or anybody hired at that station?

A. I did.

Q. Now, is this man, Walter Stevenson, does he do consulting engineering work?

[fol. 145] A. Does he do consulting engineering work?

Q. Yes, sir.

A. I don't know, sir.

Q. Have you ever been to Hattiesburg, Mississippi?

A. Once, possibly twice.

Q. Have you been to Mr. Lightsey's office, the office of the Treasurer?

A. No, sir.

Q. Do you know whether or not that office is in the same office with the radio station?

A. No, sir.

Q. You do not know?

A. I do not know.

Q. Mr. Holt and Mr. Robinson are stockholders in the offices of this WSIM, are they not?

A. Yes, sir.

Q. When they sign checks, did they sign those checks as officers of this corporation here, locally, this particular radio station, WSIM?

A. I don't recall that the titles were with their signatures.

Q. What I mean is, were the checks drawn on this particular account of Broadcast Service of Mobile or some other account?

A. Drawn on Broadcast Service of Mobile.

Q. You had a separate account, separate bank? —Bank here in Mobile?

A. Yes, sir.

Q. Did you send out bills here?

A. Yes, sir.

Q. Did you keep Accounts Receivable here?

A. Yes, sir.

Q. Did you take over the assets of WAIP radio station out there in Prichard? Did you buy the assets of that station?

A. Yes, sir.

Q. Now, Mr. Hale, when you started here as Manager, did you hire the people yourself and there was nobody left over from another station or anywhere else except people you hired?

A. Right.

Q. When you consulted with Bob Robinson or Mr. Holt about anything was such consultation to them as officers of this Corporation?

[fol. 146] A. I am not sure I understand—

Q. You talked to them as officers of this corporation, did you not? When you talked to them about problems, you talked to them as officers of this corporation?

A. Yes sir.

Mr, Pelham: If Your Honor please, that question calls for a conclusion. The testimony is already in the record that Robinson and Holt own the station in Montgomery and that he was in communication with them in Montgomery and they allege on Page 2, Page 3 of their complaint that they had an engineer loaned from another station owned by Your Complainant.

Mr. Howard: There's no argument.

Mr. Pelham: Let me finish my objection. Your Honor please, when he says in what capacity he's seeking their advice, I think he's calling for a conclusion and opinion on the part of the witness; I think he can tell the circumstances under which he consulted with them, etc. but "in what capacity" the consultation was had, I submit to Your Honor that is for Your Honor to decide.

The Court: Overruled.

Mr. Pelham: We except.

Mr. Howard: Now, would you answer that question.

A. I am not sure I remember it.

Mr. Howard: Would you read him the question, please ma'am.

(The Reporter so does.)

A. I am onl concerned with WSIM.

Q. All righ Now, you worked in Montgomery for a while, at WHH ?

A. Yes, sir.

Q. Do you know whether or not that is a non—whether the Union people work for that station or non-union? The Engineers?

A. I believe they have Union Engineers.

Q. Do you happen to know what Union, by the way, what these people are members of which Union?

A. No, sir. I don't.

Q. They are Union Engineers?

A. The best I recall they are Union Engineers.

Q. Now, do you know what this thing we have been talking about, this Holt Broadcasting Service, do you know what it is?

A. I have no idea what it is.

[fol. 147] Q. But, as you pointed out on direct examination, you know Mr. Lightsey is—Mr. Lightsey was Treasurer of this Company, is that right?

A. Right.

Q. And, you made—and he made those trips down here to discuss the problems that you had, was he discussing those as Treasurer or was he discussing them as something else?

Mr. Pelham: If Your Honor please, I made the same objection I made awhile ago without reciting it in such length as to the capacity the man was talking to him.

The Court: Overruled.

Mr. Pelham: We except.

Mr. Howard: Would you answer my question, please?

A. Here again, I will have to say I am not sure about the title, if he is Treasurer then this is what we talked in terms of.

The Court: I am assuming that you are not going to answer any of these questions where you are just guessing at the answer or presuming. Now, if you have to guess or you have to imagine you tell us you don't know, because we are only really concerned with what you know.

A. All right, sir. This question confused me.

Mr. Howard: Now, Mr. Hale, going back to the conversation you had on direct examination with somebody on about the 3rd of August of this year. That was two days after you opened the radio station?

A. Yes, sir. Approximately.

Q. Now, who come to see you?

A. Mr. Smith and Mr. Fridge.

Q. All right. Where did they see you?

A. In the studios in Prichard.

Q. All right. At that time did you already know Mr. Fridge?

A. I think I had met him the day before or so.

Q. All right. Now, how was Mr. Smith introduced, if he was introduced?

A. He was—if I remember correctly, Mr. Fridge introduced him as his official capacity with the local IBEW Local.

Q. All right, sir. Now, you stated on direct examination something about a statement that WSIM had a contract with the Local, with IBEW, who said that?

A. Mr. Smith.

Q. He told you that WSIM already had a contract?

A. He said that we had a contract and he wanted to know [fol. 148] if I intended to honor the contract.

Q. Did you know anything about a contract at that time?

A. No, sir. Not at all.

Q. Did he tell you what kind of a contract it was?

A. Not in detailed terms, other than just the Union had the contract with WSIM.

Q. Did he say anything about your station recognizing the Union for any purpose, and if so, what purpose?

A. He asked if I intended to recognize it, that Mr. Fridge as far as they were concerned, was an employee of the radio station, and since he was there, they were going to let him stay there, and since he was there we might as well use him. And, I was lost. The only thing I could say was, "I don't understand it and I'd rather it not be this way and I don't know what the legal implications are." and this sort of thing.

Q. All right. Did he tell you whether or not Mr. Fridge was a member of the Union?

A. Yes, sir.

Q. What else happened on that conversation, if anything?

A. That was the basis of the conversation. I told him that I couldn't discuss this thing with him.

The Court: Mr. Howard, find a point where you would like to break your cross-examination. We are going to recess in just a few minutes for lunch and I don't want to cut you off in the middle of—

Mr. Howard: All right, sir. I believe I will stop right here.

The Court: We will recess for lunch now, gentlemen, we will return at a quarter of two.

(Whereupon, the Court recessed for lunch after which the following occurred:)

Mr. Howard: Mr. Hale, do you know whether or not the, a National Rep., a person who sells national advertising for WSIM—whether there is such a national agency for WSIM in Mobile?

A. Yes, sir.

Q. You do know that?

A. Yes, sir.

Q. Now, do you know whether or not all of the stations have this same Rep. to sell national advertising?

A. I know they do not.

[fol. 149] Q. The stations, of course, that I was referring to was WSIM, WHHY in Montgomery and the station in Hattiesburg that has been mentioned, and I believe there is another station that has been mentioned this morning in Mississippi, the other station, Hattiesburg and then one more in Mississippi that was mentioned this morning. Now, at any time during the conversation on August 3rd, on or about that date, or the conversation of August 6th or the 7th, at either of those conversations, was there any reference to the Union representing any employee of WSIM?

A. Do you mean that they did represent any employee or—

Q. That any employee had desired them to represent them?

A. No. There was no reference.

Q. All right. Did Mr. Burns at any time or Mr. Smith on August 6th or 7th say anything about the Union representing any employees?

Mr. Goldthwaite: If Your Honor please, I am going to object to this question. I didn't go into the meeting with Mr. Burns on August 6th or 7th on direct, and I think they should recall the witness when we get to the merits, going into a subject that they didn't get into.

Mr. Darby: May it please the Court, he questioned the witness concerning the conversation with Mr. Burns. I think we are entitled to show what occurred in that conversation.

Mr. Goldthwaite: He said he didn't recall Mr. Burns being present at that time, that was on August 3rd.

The Court: Who is Mr. Burns?

Mr. Goldthwaite: He is a representative—a member of the Union.

The Court: Overruled.

Mr. Goldthwaite: But, he is not an officer, I didn't question him about that conversation, I don't think.

Mr. Howard: Was there a conversation with Mr. Burns after the conversation with Smith and Fridge?

A. Yes, sir.

Q. How long afterwards?

A. This was a few days later, the 6th or 7th of August.

Q. All right, sir. Who was there?

Mr. Goldthwaite: Now, Your Honor, I am going to renew my objection. This was a conversation I did not ask for, [fol. 150] about on direct, and if Your Honor is going to allow questioning on it, it should be as on direct rather than by way of cross-examination.

Mr. Howard: Your Honor, it was mentioned—

The Court: Overruled.

Mr. Howard: Who was there, Mr. Hale?

A. I believe Mr. Smith and Mr. Burns, and I don't remember whether anybody else was there or not.

Q. Had you met Mr. Burns before that?

A. No, sir. That was the first time I met him.

Q. How was he introduced to you, if you recall?

A. I think it was mentioned in the introduction that he had been an official in the Local sometime in the past, this was mentioned.

Q. Who did most of the talking for the Union?

A. On this second meeting?

Q. Yes, sir.

A. Mr. Burns did.

Q. All right, sir. Now, you said Mr. Smith was there, was he there the whole time or just part of the time?

A. As I recall he was there the entire time.

Q. All right, sir. And, he had on the 3rd been introduced to you as Business Agent of the Union?

A. Yes, sir.

Q. All right. Now, at that time, was there anything said about Mr. Burns working for any radio station anywhere in Mobile?

A. I believe this was also part of the introduction, he was technician and engineer, I don't remember exactly now, but something for another radio station.

Q. Do you recall the—whether or not he was called Assistant Chief Engineer or something of that sort for one of the stations, and if so, which one?

A. I don't—the station was WALA, I believe. But, I don't recall at this time whether the exact title was given.

Q. All right, sir. Now, was anything said then about a contract with WSIM?

A. Yes, sir. He made the statement—

Q. Who did?

A. Mr. Burns.

Q. All right. What did he say?

[fol. 151] A. Made the statement there that there was no contract.

Q. There was no contract?

A. There was no contract and that—

Mr. Pelham: No contract with who?

Q. With who, Mr. Hale?

A. Between the Union, the Local that is in question and WSIM.

Q. Now, this was in complete shift from what had been said on about the 3rd of—

A. Yes, sir. Directly.

Q. When they told you you did have a contract. Now, when he told you that they did not have a contract, did he say anything about wanting or desiring a contract?

A. Yes sir. He said that they wanted,—phraseology I'm not too familiar with, but something about negotiating or would we recognize and negotiate or whatever you call it, whatever the term is that applies.

Q. What did you tell him?

A. The same thing that I had said earlier that I couldn't discuss it.

Q. Now, did he claim to represent anybody? Any of your employees?

A. No, sir.

Q. Did he say anything about the employment of David Fridge, Mr. Burns?

A. Yes, sir. Along with the statement there was no contract between the Union and radio station, he said that it would probably or possibly be—I think the way he put it was we would be able to work around it and not employ Mr. Fridge.

Q. All right. Now, this was a switch too, wasn't it?

A. Yes, sir.

Q. From the earlier conversation?

A. Yes, sir.

Q. Now, let's go to—this was about the 6th or 7th of August is that correct?

A. Yes, sir.

Q. Did you have a conversation on or about the 30th of August with Mr. Emanuel Criminale?

A. Yes, sir. Now, the dates here, I am not exactly sure, but I did in that general time.

Q. What was the substance of that conversation, please?

[fol. 152] Mr. Pelham: Your Honor, please, we are going to object to that. It is not within the scope of cross-examination; no mention of any conversation with Mr. Criminale

directly or indirectly on direct examination, getting afield from the scope of cross-examination.

The Court: What is the purpose of the question.

Mr. Howard: The purpose of the question is to bring out the effect of the boycott.

The Court: Well, now—

Mr. Goldthwaite: We'll have to object, there is a proper time—

Mr. Howard: Mr. Criminale is the Advertising Manager of Green Lincoln Mercury in Mobile.

The Court: The only purpose for permitting that would be to impeach this witness, and I don't believe that is your purpose.

Mr. Howard: No, sir.

The Court: I sustain the objection.

Mr. Howard: With regard to this matter of labor, so far as you knew, working for WHHY and then coming to Mobile, was there any sort of labor policy among these stations that you know of?

A. Among which stations?

Q. Among the station in Montgomery and the station in Mobile and the station somewhere else. Was there any overall labor policy as such?

A. No. Not that I know of.

Q. At any time was there any claim by the Labor Union that they represented any employee?

A. No, sir.

Q. At any time did the Labor Union demand that you fire anybody and hire Dave Fridge?

A. No, sir.

Q. Didn't ever say fire anybody?

A. No, sir.

Q. Did they tell you to hire Dave Fridge?

A. Yes, sir.

Q. Did you have any use for two technicians?

A. No, sir.

Q. Did you at any time tell them that would mean that you would have to fire somebody?

A. Yes, it was discussed on that basis.

Q. You mean you told them that you would have to fire somebody in order to hire Mr. Fridge?

[fol. 153] A. Right.

Q. What did they say about that?

A. Something to the effect—

Mr. Pelham: Your Honor, please, I am going to object to that unless he says what did "who" say about that.

The Court: Sustained.

Mr. Howard: What did who say about it? Who was it, what did he say?

A. Now; this was in the conversation, the one or two or three conversations that were held with Mr. Smith and Mr. Burns and Mr. Fridge over the period of time there, and I don't remember which of the conversations or which one of either Mr. Burns or Mr. Smith said this particular thing or the conversation—

Q. Was it one of the two?

A. Yes, sir, it was.

Q. What did Mr. Smith or Mr. Burns say?

A. Well, the conversation went roughly to that effect, that they were only interested in having him employed, and the problem of what we did beyond that was not theirs.

Mr. Howard: That's all.

On Redirect examination.

By Mr. Goldthwaite:

Q. Mr. Hale, on August 6th you met with Mr. Burns and Mr. Smith?

A. Either on the 6th or on the 7th.

Q. That is the only time you actually met with Mr. Burns, was it not?

A. No, sir. There were several other—

Q. With Mr. Burns present?

A. Yes, sir. I believe. Yes, sir. I'm sure there were.

Q. Mr. Smith was present at every meeting, wasn't he?

A. Yes, sir. I believe.

Q. Mr. Fridge was present on one or two occasions, wasn't he?

A. Yes, sir.

Q. Mr. Averett, you remember the little short fellow, Mr. Averett,—

A. Yes, sir.

Q. He was only present on one occasion, wasn't he?

A. On one or two. Like I say, here again, there was so many things happening, I don't remember exactly. I know I saw them several times.

Q. Mr. Burns, what sort of a fellow is he, is he big, tall or—

[fol. 154] A. Mr. Burns is short, probably 5'7 or 8, light in weight.

Q. How does he compare in size to Averett?

A. Mr. Averett is a little bit heavier than Mr. Burns.

Q. How many—you have got these right in your mind—how many times was Mr. Burns present, how many meetings—

A. He was there frequently, I don't remember how many times.

Q. How many meetings in all did you have with representatives of the Union?

A. Actual visits, three, four, five or six; I don't recall.

Q. Now, when you met with Mr. Smith and Mr. Burns on August 6th, you started off the conversation by apologizing to Mr. Smith for not having been able to talk to Mr. Robinson about this subject of hiring Fridge, did you not?

A. Words maybe to that effect.

Q. And, at that meeting, you actually called Mr. Robinson and you and Mr. Burns talked to Mr. Robinson over the telephone?

A. This was on the 6th, yes, sir. Right.

Q. So, as of that date, it had not previously been determined what the policy was going to be about hiring Mr. Fridge or not?

A. Yes, sir. It had been determined.

Q. But, at the same time you told those people you had not been able to talk to Mr. Robinson so you did not know whether or not you were going to hire Mr. Fridge, isn't that correct?

A. Well, you are taking parts of it which is correct, and there are other factors that entered into it. I had made

the decision, the decision had been made, but the repeated calls and the repeated pressure against me to hire him, which I had already said we couldn't do caused me to get in touch with Bob.

Q. And, yet, you apologized for not having been able to get in touch with Mr. Robinson on this subject—

A. That's right.

Q. At the beginning of this meeting?

A. Yeh, that's right. Just a few days later.

Q. Instead of telling these boys you couldn't hire Fridge you told them you would have to talk—

A. No. I told them that we could not and they said, "you will" and I said if we are legally required to do this, you will have to discuss it with somebody else. I said, "we could not" and they said, "he is an employee of yours."

[fol. 155] Q. And, you said you would talk to Mr. Robinson about whether you had to do this or not, is that right?

A. I said they would have to discuss it with him.

Q. But, you apologized for not having—

A. I had not been able to get in touch with him to put him in touch with Mr. Smith and Mr. Burns.

Q. So, you had agreed to get in touch with Mr. Robinson previously?

A. For that reason, right. Yes, sir.

Q. On this occasion, you did call Mr. Robinson and talk to him, did you not?

Mr. Darby: I object to him leading the witness. It is still his witness.

The Court: Sustained.

Mr. Goldthwaite: Well, he had already testified to that, if Your Honor please.

Mr. Darby: I object to it being repetitious then, Your Honor.

Mr. Goldthwaite: What happened when you talked to Mr. Robinson on the telephone?

A. This was the August 6th or 7th when Mr. Burns—

Q. Yes.

A. I told him they were in the office, and at the same time incidentally, I told Mr. Burns that this was a little bit lucky because Mr. Robinson was a hard man to catch and

that he happened to be in when I placed the call, and I put Mr. Burns on the phone and he and Mr. Robinson talked. If I remember, I listened to most of the conversation on the extension. I am not sure whether I stayed on through the whole conversation or not.

Q. And, Mr. Burns asked Robinson what was Fridge's status as an employee, did he not?

A. I don't recall.

Q. Mr. Robinson said something about Cliff Shelkowsky?

A. I don't recall.

Q. You don't remember?

A. No, sir. Like I say, I was on the phone, I don't remember whether I stayed on it the whole conversation or not. At any rate, I don't recall what the conversation was on that, on those particular points.

[fol. 156] Q. You know Shelkowsky, don't you?

A. I know the name.

Q. You know him personally?

A. No, sir. I think I met him one time.

Q. You had discussions with Mr. Robinson prior to that time as being prospectively the man the Company wanted as Engineer for WSIM?

A. Yes, sir.

Q. And, you had heard where Shelkowsky was, Robinson told you where he thought Shelkowsky was?

A. I remember that. I don't know where now, but I remember that that had come up.

Q. Robinson told you he was in Canada and he was trying to get him to come down here and take this job, did he not?

A. Right.

Q. And, he said he wanted him to be Chief or Supervising Engineer over all four radio stations?

A. No. Be the Chief Engineer for WSIM and do consulting work—

Q. For the other three—

A. And any other stations, the man does this year round, he is consultant for stations throughout—

Q. The Holt Service?

A. No, no. Throughout the Southeast or the nation; I don't know who all he consults for, of with.

Q. Now, you testified that as to what you wanted in radio equipment in that station, right?

A. I testified something to that effect. I said what was there was not what I wanted.

Q. Not the equipment that you wanted?

A. Not the equipment, not the working condition of the equipment, not the set-up, not anything about it.

Q. What was the equipment which was there when the station was purchased?

A. The complete rundown of every item or—

Q. When you said it wasn't what you wanted, I want to know what was there?

A. What I did not want was unworkable broadcast equipment. Equipment that had not been maintained as far as our announcers and myself could ascertain.

Q. What equipment had not been maintained?

[fol. 157] A. Anything that—

Q. Specifically, what had not been maintained?

A. Tape recorders, turntables, microphones, recording equipment in both the broadcasting studio and the recording studio which consisted of every piece of equipment that was workable or at least capable of carrying electricity through it.

Q. What equipment was it then? You said all of it was unworkable or—

A. I said, tape recorders, turntables, microphones whatever else is involved in these things, amplifiers. I am not a technician, I can't give you a detailed list.

Q. That is what I thought. Usually the Engineer for Holt Service inspects the equipment and makes the decisions about the condition of the equipment, don't they?

A. No, sir.

Q. Who does it for Holt?

Mr. Darby: I object, it is not in evidence—

Mr. Goldthwaite: I asked him a question he can answer.

Mr. Darby: You are assuming somebody does it for Holt.

Mr. Goldthwaite: If he knows he can say who does it.

The Court: Overruled.

A. Nobody does it for Mr. Holt, as manager of WSIM, it was my responsibility to get as good a broadcast quality and as good working conditions for our people as I could.

Q. This equipment was in good broadcast condition?

A. Absolutely not.

Q. What was wrong with it specifically?

A. I don't know specifically except that it just did not work.

Q. It didn't work. In what respect did it not work?

A. The turntables did not play at the right speed, the arms wouldn't or heads, the pickup heads didn't reproduce property; the transmitter was off the air continually for a period of a few days at this time.

Q. This was after you started operating?

A. This was as of the day we started.

Q. Mr. Fridge was not there to make it run, was he?

A. Definitely not.

Q. You don't know whether it run good before you bought the station or not? While Mr. Fridge was there to make it go?

[fol. 158] A. Uh, I don't know whether it would work or not. How did you ask?

Q. You don't know whether Mr. Fridge was able to make it go when he was working for WAIP or not, do you?

A. No, sir.

Q. But, it had been purchased by your Company?

A. Right.

Q. And, you intended to use the equipment that you purchased?

A. We intended to use what we could of it. Most of it we knew would have to be junked.

Q. You don't know whether Mr. Fridge had been charged with the responsibility of using and maintaining the turntables for WAIP, do you?

A. Other than you told me or asked me or something earlier that he had been Chief Engineer or Engineer for WAIP.

Q. But, you don't know what his duties were with WAIP?

A. No.

Q. Did you actually look at the transmitter yourself to see what the physical condition of it was?

A. I looked at the transmitter and the building in which it is housed.

Q. Separate building from the studio building?

A. Right.

Q. Did you open the transmitter and look at the condition on the inside?

A. I looked at it with an Engineer.

Q. With Mr. Stevenson?

A. Mr. Stevenson.

Q. He worked for WHH,—the Montgomery station?

A. Yes, sir.

Q. Now, on the 6th, you still had not gotten an Engineer to come to Mobile, had you? Mr. Robinson was still trying to get one?

Mr. Darby: Now, I object to him asking the witness two questions at one time, Your Honor.

The Court: Sustained.

Q. You still hadn't gotten an Engineer on the 6th to work in Mobile?

A. Now, here again, the dates are important and I don't remember. We were not a day without an Engineer.

[fol. 159] Q. That was the day you talked about Mr. Shelkowsky coming down with Mr. Robinson.

A. I don't remember whether Mr. Stevenson was still here or not on that day.

Q. You discussed the purchase of this station with Mr. Robinson—

Mr. Howard: Judge, if you will permit me to interrupt just a moment. Mr. Givens wife just called and his child has been injured. —

(Off the record discussion)

Mr. Goldthwaite: You discussed the purchase of this station with Mr. Robinson before it was actually purchased—

Mr. Darby: May it please the Court, this isn't proper re-direct. I think he went on everywhere on direct and we

haven't gone into any purchase on our cross-examination. I don't know that it would be relevant to the issue before Your Honor on a plea in abatement in any event.

Mr. Goldthwaite: The question came up on, if you want to call it cross, on the discussion of the equipment.

The Court: Overruled.

Mr. Goldthwaite: You discussed the purchase of this station with Mr. Robinson before it was actually purchased, did you not?

A. Not the actual—really the actual involvements in the purchase of it. The fact that he had planned to purchase the station, yes, sir.

Q. He discussed it with Mr. Holt?

A. I don't know that. I was not—

Q. You were not present in talking about it when Mr. Holt was there?

A. Right.

Q. Mr. Robinson explained to you the terms of the purchase insofar as what went with the property you were to manage, did he not?

A. The equipment and assets.

Q. Equipment, assets, debts and liabilities.

A. In just about those terms.

Q. Yes, sir. And, one of the liabilities or contracts that was assumed in the purchase was the advertising contract, National Advertising contract, was it not?

A. There were none.

Q. Sir?

A. There were none.

[fol. 160] Q. WAIP had no national advertising?

A. Not at the time the transaction was made.

Q. Sir?

A. Not at the time the transaction was made.

Q. So, you did not assume—

A. To the best of my recollection. If there was one I don't remember it.

Q. Was the National hookup contract assumed in the purchase?

A. No, sir.

Q. Now, you said you were—who was the advertising representative that you selected for WSIM for national advertising?

A. George Hollingberry.

Q. Hollingberry?

A. Right.

Q. Where is he?

A. His office is in several cities. He has several branch offices, New York, Chicago and six or eight other cities.

Q. Which office did you do business with?

A. We do business with—you have to deal with each of the representatives offices because—

Q. Do business with all of them, is that right?

A. Right.

Q. In other words, these offices handled various accounts, different accounts. Each office handles different accounts?

A. The overall business has the purpose of supplying the radio stations or selling radio stations advertising time. And, each office is in a different part of the country to handle the accounts in that particular area of the country.

Q. Mr. Holt made those arrangements for national advertising representative for WSIM, did he not?

A. I don't know whether Mr. Holt made it or not.

Q. You didn't do it?

A. I didn't do it. No, sir.

Q. Who told you that Hollingsworth would be the representative?

A. Bob Robinson.

Q. Robinson told you. Who was the representative for the Montgomery station?

A. Hollingberry.

[fol. 161] Q. Same one you had in Mobile?

A. Right.

Q. You were mistaken a minute ago, I take it, when you said they did not have the same representative—

A. The question was asked if the four stations in question had it and I said no. They don't.

Q. You mean as a unit, jointly they don't have it.

A. The four stations individually don't have it. The only two stations which do out of the four under discussion is WHHY and WSIM.

Q. And, WHHY, when did they start using Hollingberry?

A. About the same time.

Q. About the same time?

A. That they started at WSIM. No, no, they didn't either. It was earlier for WHHY because—

Q. How much earlier?

A. Two or three months earlier or four months earlier or maybe even longer because this was before the transactions had been made for WSIM.

Q. Who made the arrangements with them for WHHY?

A. Here again, I don't know. Same answer I gave a minute ago.

Q. Did Mr. Robinson go to this office and make the arrangement?

A. He went to the office.

Q. Where did he go?

A. In New York.

Q. Mr. Holt went with him?

A. Yes, sir.

Q. The two of them went together?

A. Yes, sir.

Q. Now, who had been the representative for WHHY before they got Hollingsworth or Hollingberry or whatever his name is?

Mr. Darby: May it please the Court. I submit this is not proper re-cross examination.

Mr. Goldthwaite: You brought the subject of this advertising up. I am entitled to find out about it.

The Court: Overruled.

A. I don't recall. Oh, yes. Jack Masla.

Q. Who?

A. Jack Masla. M A S L A was the rep immediately prior to Hollingberry.

[fol. 162] Q. He also the rep for Hattiesburg station?

A. As far as I know he did not rep any station except HHY.

Q. Except HHY. Who represented the Hattiesburg station?

A. As far as I know they don't have one.

Q. They don't have one as far as you know?

A. Right.

Q. How about the McComb station?

A. Same thing is true here.

Q. As far as you know they don't have any National Advertising?

A. Representative.

Q. Representative. But, you are familiar with those two stations?

A. Just very vaguely.

Q. How about the Bogaloosa station?

A. I was familiar with that.

Q. Do you know who has the National Advertising for the Bogaloosa station at the present time?

A. This station was sold.

Q. Who sold it?

A. I don't have any idea.

Q. But, you know that Mr. Holt and Mr. Robinson sold the station, is that right?

A. No, I don't. I don't know that Mr. Robinson was even involved in it.

Q. You know Mr. Holt got rid of it?

Mr. Darby: I object to the question.

Mr. Goldthwaite: He said it was sold, I want to find out what the basis of his information is. Who sold it? When was it sold?

A. I have no idea. Oh, when was it sold?

Q. Yes.

A. About the same time or shortly after I went to WHHY. Five or six years ago. I don't remember exactly.

Q. Robinson told you it was going to be sold when he asked you to come to WHHY?

A. No. No.

Q. Now, Mr. Hale, you testified that you, quote "have no idea what the Broadcasting Service is" didn't you?

A. The way the question was asked I have no idea what this little slogan on the air is.

Q. You were playing on words, then, right?

[fol. 163] A. I didn't mean to be.

Q. You didn't mean to. But, you know Charlie Holt has got an interest in four radio stations, don't you?

A. I know he has an interest in two, I think he has an interest in three, and I have no idea what this fourth one is.

Q. You know enough about McComb, Mississippi station to know they don't have a national advertising representative, isn't that correct?

A. To the best of my ability, knowledge, I don't know that they have a—

Q. Who's the manager of that station?

A. A Mr. Carol Hines.

Q. Carol Hines. Who is the Program Director?

A. I don't know.

Q. You don't know the Program Director? What is Mr. Hines title?

Mr. Darby: I object, we are getting completely outside the scope of examination, Your Honor. It doesn't have anything to do with—going over the same thing in substance that he did on direct, but there hasn't been any questions about that station since then. As to who the national advertising representative was, he got the information on that.

Mr. Pelham: On direct examination, that gentleman was asked about this expression, Holt Broadcasting Service, then he got up and he said, "We are going to show you there's no chain of radio stations." And, on cross-examination he asked this man, and under oath, he's been working for them for five years, and under oath his reply was in response to this question—

(Here occurs oral argument of counsel)

The Court: Overruled.

Mr. Goldthwaite: You remember making an affidavit that was used in the first hearing in this case?

A. Yes, sir.

Q. Is this your signature?

A. Yes, sir.

Q. Do you remember this affidavit I show you?

A. Yes, sir. I don't remember the contents of it.

Q. You don't remember everything you said in that affidavit. I marked some words here on Page 1, underscored them with ink where it says, "Walter Stevenson, an employee of an affiliated Company, WHHY, Montgomery, [fol. 164] Alabama, temporarily served as Engineer." That is a correct statement, is it not?

A. Yes, sir.

Q. And, WHHY and WSIM were affiliated Companies, right?

A. As far as the contents of that sentence, yes, sir.

Q. And, you knew at that time Mr. Holt and Mr. Robinson owned these stations?

Mr. Darby: Your Honor, that is not even the facts in evidence, Your Honor. Now, he is asking if he knew something that the facts shows to the contrary; other people owned them too.

The Court: Sustained.

Mr. Goldthwaite: You knew there was an affiliation.

The Court: Mr. Darby, you had asked me to—

Mr. Darby: Yes, sir. I know that I'm supposed to be going, but I don't want to leave while the examination is going on.

The Court: Well, I'll recess to give you a chance to take care of that matter. All right, sir. We'll recess. We have a problem here with the Federal Court and we try to cooperate whenever possible to get lawyers to attend both places.

(Recess)

Mr. Goldthwaite: You testified in this affidavit, Mr. Hale, that these were affiliated companies, didn't you?

A. Yes, sir.

Q. What was the affiliation between them that you were referring to?

A. Between WSIM and HHY?

Q. Yes, sir.

A. That Bob Robinson and Charlie Holt were each a part of the corporation.

Q. Owners?

A. Yes, the owners. Well, no, stockholders.

Q. Stockholders.

A. Stockholders.

Q. And, that had other functions as well, besides being stockholders, did they not?

A. How do you mean?

Q. They actually directed and controlled the company, the activities, hiring—

A. Which Company?

[fol. 165] Q. WSIM and the Montgomery station.

Mr. Darby: I object to him leading his own witness, Your Honor.

The Court: Sustained.

Mr. Goldthwaite: They had other functions besides being chief stockholders with reference to the two stations, did they not?

A. I know that Bob Robinson was the Manager of WHHY and I don't have any idea in detail of any functions that Mr. Holt had with the operations of that radio station.

Q. WHHY?

A. WHHY.

Q. He did come over and talk to Mr. Robinson?

A. On occasion.

Q. He also came to Mobile and talked to you?

A. Yes, sir.

Q. And, you looked to Mr. Robinson for your directions in running WSIM?

A. Right.

Q. And, both stations sent in their financial reports to the same man in Mr. Holt's office in Hattiesburg?

A. We sent them to Mr. Lightsey.

Q. This affiliation is what actually was Holt Broadcasting Service, wasn't it?

A. Here again, I will just have to say I do not know what the Holt Broadcasting Service is.

Q. You mean Charlie Holt didn't tell you what he meant when he said—.

A. No, sir.

Q. —Holt Broadcasting. But, you know what stations Charlie Holt is interested in?

A. I know of two and probably thre. I don't know about the station in McComb.

Q. What do you know about McComb?

A. I know the Manager's name.

Q. You worked for Mr. Holt for about five and a half years?

A. Not exactly. I worked for Mr. Robinson for this period of time.

Q. And, there were conversations between you and Mr. Robinson about Charlie Holt?

[fol. 166] A. Yes, sir.

Q. You had conversations with Mr. Holt yourself?

A. On occasion, yes, sir.

Q. And, based on this, you know he has four stations, don't you?

A. No, sir.

Mr. Darby: Object, no evidence he has four stations.

Mr. Goldthwaite: I'll let the Judge decide that. Now, getting on to try to get through with this. Who told you to leave Mobile and go back to Montgomery?

Mr. Darby: Objection. He's assuming that someone told him.

Mr. Goldthwaite: Somebody had to either tell him or consent to it.

The Court: Sustained.

Mr. Goldthwaite: How did you happen to go back to Montgomery?

A. Bob Robinson called me and asked me if I would come back to Montgomery.

Q. He asked you?

A. Yes.

Q. What happened with reference to your pay when you went back to Montgomery?

Mr. Darby: Object, it was not something covered on cross examination, Your Honor.

The Court: Sustained.

Mr. Goldthwaite: Who contacted you about coming down here today?

Mr. Darby: Objection again, that's not covered.

The Court: Sustained.

Mr. Goldthwaite: If your Honor please, I—OK. I think that is all I have.

The Court: Any re-cross?

Mr. Howard: No, sir.

The Court: Thank you. Your may step down.

Mr. David S. Fridge, a witness for the Defendant, having first been duly and legally sworn, testified as follows:

On Direct examination.

By Mr. Goldthwaite:

Q. You are Mr. David S. Fridge?

A. Yes, sir.

Q. Did you one time work for Radio Station WAIP, Mr. Fridge?

[fol. 167] A. Yes, sir.

Q. When did you work for them?

A. From June of 1958 until July 31st of 1962.

Q. How many years was that?

A. Roughly four years.

Q. How old are you?

A. Thirty two.

Q. Are you married?

A. Yes, sir.

Q. Do you have any children?

A. Six.

Q. Six?

A. Yes, sir.

Q. In what capacity did you work for WAIP?

A. As an Engineer.

Q. What do you mean by engineer?

A. I took care of what technical duties were assigned me.

Q. What do you mean "technical duties"?

A. Upkeep of equipment and any other duties that were tendered to me by the Manager and Chief Engineer of the station.

Q. What kind of equipment?

A. It was second hand equipment and composite equipment that was constructed by personnel of the station.

Q. Are you talking about—would you name the different pieces of gear that you are referring to by way of equipment?

A. Well, there was a transmitter which was a Collins 20 K type which was second hand at the time the station went on the air, it was rebuilt at that time, and there was composite audio control board which was build by one of the owners of the station. Most of the audio gear within the station was home-made or composite which it is called in the industry. There was some few second hand pieces of equipment as far as amplifiers went; the only new equipment at the time the station went on the air was frequency and modulation monitors and an Altec amplifier which was required by the FCC.

Q. When did WAIP go on the air?

A. It had been in operation roughly seven years, I believe, at the time it was sold.

Mr. Darby: May it please the Court, I move to strike this discussion as to what the equipment was at the time the station went on the air because his testimony shows he [fol. 168] didn't go there until 1958 and the station was on the air about three years before he got there.

Mr. Goldthwaite: It doesn't show he doesn't know.

Mr. Darby: It could only be hearsay what somebody else told him.

Mr. Goldthwaite: He hasn't said anybody told him, he may have been there and looked at it. He said he didn't go to work for them until three years after the station—

Mr. Darby: I move to strike it, it certainly not shown and the testimony would indicate that the witness was not there during that period of time.

The Court: Motion granted.

Mr. Goldthwaite: Did you go to visit WAIP before you went to work there?

A. I was employed by one of the owners and helped in the construction of the station originally on its going on the air.

Mr. Goldthwaite: I ask that the testimony stricken be reinstated.

The Court: All right.

Mr. Goldthwaite: How long have you been a technician, Dave?

A. Roughly eight years.

Q. At the present time?

A. Yes, sir.

Q. When did you stop working for WAIP, what were the circumstances?

A. The corporation, Prichard Broadcasting Company, Incorporated, was dissolved as an active business entity as of July 31st, 1962, when the physical assets of the radio station were sold to Holt Broadcasting Group.

Mr. Darby: I move to strike the phrase, Holt Broadcasting Group until it is shown what he knew about it.

The Court: Granted.

Mr. Goldthwaite: Do you know Charlie Holt?

A. I have met him, sir.

Q. Did he come to station WAIP while you were working there?

A. Yes, sir.

Q. Did he come in the transmitter?

A. Yes, sir.

Q. Did you go over the station premises with him?

A. No. Not with him.

[fol. 169] Q. Did you talk to him?

A. Yes, sir.

Q. What was your conversation with him?

A. Of a general nature, I was given to understand—

Mr. Darby: I object to what the witness was given to understand.

Mr. Goldthwaite: Wait a minute. I'll straighten it out. When was this?

A. This was roughly a month prior to the taking over of the assets by the new Company.

Q. Just tell us what was said by Charlie to you.

A. As I remember, sir, the conversation was general along the lines of radio. He went into his own background in radio somewhat, he discussed his operations with the other stations.

Q. What other stations?

A. The station in McComb, Mississippi, the station in Hattiesburg, Mississippi, he mentioned WHHY in Montgomery.

Q. What did he say about those three stations?

A. He just mentioned the fact they were on the air and they were smaller markets than Mobile and this should be a new experience for him.

Q. Did you receive any notice or written communication with reference to what your status was at WAIP as of July 31st?

A. I received the week of July 31st a written letter advising me that the corporation would no longer exist as a business entity in operation after the 31st the end of the broadcast day July 31st. And, my services would no longer be needed by the corporation as such.

Q. Did anybody with the new corporation talk to you about employment prior to August 1st?

A. No, sir.

Q. Did you talk to an Engineer for the new corporation before it was purchased, before the station was purchased?

A. Yes.

Q. Who did you talk to?

A. A Mr. Stevenson from Montgomery.

Q. Did you know him in the trade?

A. No.

Q. When did you talk to him?

A. I met him when he came down, I think it was the 31st.

[fol. 170] Q. Of July?

A. Yes, sir.

Q. Did anybody from, Engineer go over the equipment before it was purchased for Charlie Holt?

Mr. Darby: Objection to somebody doing something.

Mr. Goldthwaite: He can know—if he knows, he can answer it.

The Court: Overruled.

A. The equipment was gone over by a representative of Gates Radio and Mr. Lightsey.

Q. Mr. Lightsey?

A. Mr. Lightsey.

Q. Well, was this person in company of Mr. Lightsey at the time?

A. Yes. I was instructed by Mr. Miller, who was my superior at WAIP—

Q. Now, just a second. Was Mr. Lightsey present with Mr. Miller when this instruction was given?

A. Yes.

Q. All right. Go ahead and tell us what Mr. Miller instructed you.

A. I was instructed to take Mr. Lightsey and the representative from Gates on a complete tour of the facilities to show them the equipment, to let them look at the engineering records and to answer any questions they might have.

Q. Did you have conversations with them about why they wanted to look at the equipment?

A. No.

Q. Did you have conversation with them about any other stations they were interested in?

A. Mr. Lightsey mentioned Hattiesburg, station WHSY and the McComb station, WHNY, I believe it was, he was making light of the engineering personnel at the other stations that he had contact with.

Q. What did he say about the other stations?

A. He seemed to think that the engineers were a pretty sorry lot.

Mr. Howard: I am going to object to what he seemed to think.

The Court: Sustained.

Mr. Goldthwaite: Just tell us what he said about the Hattiesburg station and the McComb station.

[fol. 171] A. He said that they were on the air, there had been mention of the FCC inspection that WAIP had gone

through the previous year. And, how few citations we had gotten, Mr. Lightsey mentioned a large number, I forget the exact number of citations that they had received, on engineering at their stations in Mississippi. He commented on the undependability of the quality of work of the engineers that he had in Mississippi.

Q. What is a citation?

A. A citation is a notice of infringement on the rules and regulations governing the maintenance and tolerances allowed by the Federal Communications Commission in regards to broadcast standards.

Q. Did they comment on the condition in which the equipment at WAIP, they found the condition in?

A. Yes.

Q. What did they say about it?

Mr. Darby: Objection to what the Federal Communications Commission said about it.

The Court: Sustained.

Mr. Goldthwaite: I'm talking about—did Mr. Lightsey and the gentleman with him comment on the condition of the equipment at WAIP when they made this inspection?

A. Yes.

Q. What did they say?

A. They said it was obviously old equipment most of which would require replacing once the station got on its feet.

Q. Was anything said about exchanging equipment between that station and some other station?

A. Not at the time by Mr. Lightsey.

Q. All right. What are you doing now, Dave?

A. I'm a communications officer training with the Mobile City Police Department.

Q. What are your duties?

A. Those of a radio officer. I supervise four dispatchers which encompasses the dispatching of all police and fire vehicles as well as maintenance vehicles within the city of Mobile.

Q. Do you have any technical responsibilities in connection with this job?

A. Yes.

Q. What are they?

[fol. 172] A. They are those of an engineer. The job has a prerequisite, an FCC license before you can make application for the job.

Q. How long have you had that job?

A. Since the 14th of February.

Q. 1963?

A. Yes, sir.

Q. On August 1st, did you go to the Prichard station, WSIM?

A. Yes, sir.

Q. That was formerly WAIP?

A. Yes, sir.

Q. What happened when you went there?

A. I contacted Mr. John Hale, whom I had previously met, and had been introduced to and I understood from the introduction that he was Manager of the station. I asked him where he wanted me to go to work, and he replied that he did not know whether or not I was working.

Q. He did not know whether or not he was working?

A. Yes, sir.

Q. Did you have any other conversation with him?

A. I don't recollect the exact conversation, but it culminated with him asking to see a representative of the Union.

Q. Did he say—anything said about the contract WAIP had with the Union?

A. I asked whether or not the contract,—if he were going to honor the contract, and it was at this point he asked to see a representative of the Union.

Q. What did you do about that?

A. I contacted the Business Agent, Mr. Dave Smith.

Q. Seated on my left?

A. Yes, sir.

Q. What happened then?

A. He and M. C. Averett, a member of the Executive Board of the Union and myself went back out to Prichard and met with Mr. Hale.

Q. Was anybody else with you besides M. C. and Dave Smith?

A. No.

Q. What happened at that meeting?

A. I introduced Mr. Smith and Mr. Averett to Mr. Hale and the general subject of whether or not the contract that had existed between WAIP and Local 1264 of the IBEW was indeed in force. I understood as did Mr. Smith from a clipping in—

[fol. 173] Mr. Darby: I object to what the witness understood from a clipping.

The Court: Sustained.

Mr. Goldthwaite: Did you have a conversation with Mr. Hale about a newspaper clipping?

A. It was a magazine clipping.

Q. Did you have a conversation with Mr. Hale about it?

A. Yes.

Q. Tell what happened with reference to this clipping between you and Mr. Smith and Mr. Hale.

A. Mr. Smith presented the clipping and quoted its source.

Q. What did the clipping say?

A. It—

Mr. Darby: I object to what the clipping said. It would be the best evidence itself as to what it said.

Mr. Goldthwaite: Your Honor, the truth of what it said is not in issue, it is just a conversation between the parties is what is important. And, I think the general nature of that subject matter of the clipping is pertinent for that purpose.

Mr. Darby: He's trying to testify as to what was in the clipping, and the clipping would be the best evidence.

The Court: I don't understand who the person was he had his conversation with.

Mr. Goldthwaite: Who was the—

The Court: I understand his name, but surely his capacity is not in dispute.

Mr. Goldthwaite: Who is Dave Smith?

A. Dave is the Business Agent of Local 1264.

Q. Is that the chief business representative or executive officer of the Union?

A. Yes.

Q. And, who was he talking to?

A. He was talking to Mr. Hale, the Manager of WSIM.

The Court: I overrule the objection.

Mr. Goldthwaite: Now, what was said about this clipping?

A. Mr. Smith presented the clipping to Mr. Hale and explained its contents and his interpretation of the contents.

Q. What did he say to Mr. Hale his interpretation was?

[fol. 174] A. He said that he interpreted the contents of the clipping to mean that a radio station that had an existing contract with a labor union that was sold—let me restate that. A radio station with a valid union contract that was sold was sold not only as a physical assets but that the labor contract itself was parcel of the physical assets.

Q. What did Mr. Hale say to that?

A. Mr. Hale said that he had no idea at all about that, it was something he didn't know much about; he had no authority whatever to make a judgment on that. He didn't understand it all that way.

Q. Did he say he was going to talk to anybody?

A. He mentioned, I believe, Mr. Bob Robinson whom he would have to contact to get any sort of information as to the new company's feeling about the contract.

Q. Did he say anything about some other individual besides Mr. Robinson?

A. There was a mention in the conversation of Mr. Holt. I do not remember the exact context of that mention.

Q. Do you remember what he said about Mr. Holt?

A. Nothing other than the fact that Mr. Holt and Mr. Robinson were his superiors and that he had to turn to them on major policy decisions.

Q. Did he say anything about who was boss?

A. At the time Mr. Smith asked whether or not Mr. Hale was Manager of the station, Mr. Hale said, "yes" he was. He said, "Well, as Manager, do you or do you not have the power to hire?" And, Mr. Hale said, "no" he did not.

Q. Did he say who did?

A. He said Mr. Robinson would have to be consulted.

Q. Did he say anything about who the big boss was?

Mr. Darby: I object to him leading the witness.

Mr. Goldthwaite: I asked if he did, if he didn't he can say "no".

The Court: Overruled.

A. He mentioned the fact—

Q. Did he say something about the big boss?

A. He mentioned specifically—

Q. Did he or not?

A. Yes.

[fol. 175] Q. What did he say about it?

A. He said that Mr. Holt was the big boss.

Q. Now, did he say anything about another individual besides Mr. Holt and Mr. Robinson?

(no answer)

Q. About Mr. Stevenson?

A. At the latter part of the conversation that took place on the first of August between Mr. Smith, Mr. Averett, Mr. Hale and myself, he mentioned the fact that Mr. Stevenson from WHHY in Montgomery, who was the Chief Engineer up there had gone over the equipment and had talked with me and was satisfied with the quality of my work under the circumstances, and had stated that as far as his having any worries about engineering, that if I was going to be his engineer he had no worries.

Q. Was Stevenson there on this day, August 1st?

A. Yes. However, he was not present at the meeting.

Q. Did you go to the transmitter that day?

A. No, I didn't.

Q. Did you have any conversation with Stevenson?

A. No.

Q. Was there any statement made with reference to the criticism of your work at that time?

A. None.

Q. Was any ever made to you?

A. None up until I was presented with a copy of a statement by Mr. Hale.

Q. An affidavit?

A. Yes, sir.

Q. When was that, several months ago?

A. Yes, sir. At the—I think it was the second day of the hearing.

Q. Was any discussion about the terms of the union contract on that first occasion?

A. Yes. Mr. Hale said that he had been given to believe by the former ownership of the station that the union contract required two and a half technicians or engineers and he was advised at that time that the contract called for one and a half technicians such as there were working at WAIP up until the last day.

[fol. 176] Q. Would you explain to the Judge what a half a technician is?

A. That is a man who works twenty hours or more a week but less than forty.

Q. Did he say anything about what their plans were concerning an engineer?

A. No. He mentioned the fact that there would be someone who would take over here in Mobile that they would have to have an Engineer. He mentioned no names. We asked if Mr. Stevenson were going to be transferred from Montgomery down here and he said "no".

Q. Did he say anything with reference to what they specifically planned, someone planned to do about an Engineer?

A. I do not recollect other than the fact that he said he would try to use me, and the parting words that day at the end of the conversation were that I could consider myself more or less on call, and if they needed me they would call me.

Q. Did he say anything about plans for bringing an Engineer to Mobile?

A. That was mentioned.

Q. What was mentioned about it?

A. There was a rather tenuous thing in which there was mention that Mr. Holt and Mr. Robinson had contacted an Engineer whom they were possibly going to bring in as Chief Engineer who would also be the consultant for the entire four stations that they were interested in.

Q. Did he use any term in referring to these four stations?

A. Yes. He called it the "group."

Q. The group. Is that all, just the—

A. Well, reference in the conversation had been to the Holt Group which—

Q. Did you attend any other meetings between the Union and the representative of WSIM?

A. No, sir.

Q. What manner did you—you said you used one and a half technicians?

A. Yes, sir.

Q. How many hours a week did one fellow work? Was that you?

A. No. I was the full time technician. I was scheduled forty hours a week.

[fol. 177] Q. What happened if you had to work overtime?

A. I was paid time and a half.

Q. How about the half time man?

A. He was paid at the rate of twenty hours a week, and if he worked any hours in excess of twenty hours a week he so notified the bookkeeping department—

Mr. Darby: I object to what the other man did.

Q. Do you know what he did?

A. Yes, sir.

Q. What did he do?

A. He worked as parttime technician and anytime his hours exceeded those of twenty which he was scheduled, he was paid for them.

Q. Did you have anything called a "call-in" pay?

A. Yes, sir.

Q. What is "call-in" pay?

A. "Call-in" pay is a minimum of three hours pay per call-in. If I were called in on occasion other than the hours for which I was scheduled according to the contracts, I was paid for three hours time.

Mr. Darby: May it please the Court, I wish to move to strike the witness testimony. If it was according to a contract, the contract would be the best evidence. We are not a party to it and don't know anything about it, but he is

trying to talk about something that is supposed to be in writing.

The Court: Sustained, grant your motion.

Mr. Goldthwaite: Mr. Fridge, are there certain conditions that are standard in various radio stations in Mobile for which the Local Union has a contract?

Mr. Darby: If it please the Court, it would be a conclusion as to whether—again, the contract would be the best evidence.

The Court: Sustained.

Mr. Goldthwaite: How long did you wait on standby as Mr. Hale requested you to do?

A. Until such time as I was instructed by the Local Union that there was little possibility that there would be any amicable relations between the Local and the new ownership of the station.

Q. How long was that?

A. Roughly a month.

Q. Did you begin doing something, changing your activities a few days later?

[fol. 178] A. Yes, sir. I started looking for a job.

Q. Did you start picketing?

A. Yes, sir. I took part in that activity also.

Q. What did you do?

A. I picketed when scheduled, I called on advertisers as scheduled.

Q. Where was the picketing?

A. The picketing was in front of the entrance to the studios at WSIM.

Q. Where is the studio located?

A. 74 Main Street upstairs in Prichard.

Q. Where is the transmitter?

A. The transmitter is at the end of Talisman Street off of Whistler Avenue in Prichard.

Q. Was picketing conducted there?

A. No, sir.

Q. If the public comes to the station, where do they call?

A. At the studio.

Q. When did the picketing start, on what day?

A. I am not certain.

Q. Did Mr. Holt come to town during this period?
A. I was told that he was in town.

Mr. Darby: Objection, strike.
The Court: Sustained.
Mr. Goldthwaite: Did you see him?

A. No, sir. I did not see him.
Q. When you contacted the advertisers, what did you do?
A. We merely stated the fact that we were protecting the working conditions we had gained through collective bargaining over many years time, that the radio stations with which the union had contracts in town; that we had had a contract with WAIP and had a long association with no trouble and that we would appreciate the advertisers doing business with radio stations that had union contracts in order to protect our bargaining.
Q. Did you have anything in writing?
A. No, sir.
Q. You didn't have anything in writing?
A. No, sir.
Q. Did you—did the Union send out any letters to advertisers?
[fol. 179] A. Yes, sir.
Q. Now, did you during this period listen to station WSIM?
A. Yes, sir.
Q. Did it have any announcements concerning Mr. Holt that came over the air?
A. Yes, sir. They occurred throughout the day and with regularity at sign-off. I cannot quote them directly, but the phrase was "WSIM is a member of the Holt Broadcast Group."
Q. Holt Broadcast Group. Are you familiar with a magazine called "Broadcast"?
A. Yes, sir.
Q. What is that magazine?
A. It is the Trade Journal of radio and T.V. industry.
Q. What do you mean by "Trade Journal"?
A. It is a journal that is peculiar to radio and television trade, and is widely read and quoted as an authoritative source within the industry.

Q. What sort of information is contained in this magazine?

Mr. Darby: Objection. It is irrelevant without regard to what it might be.

Mr. Goldthwaite: I think, if Your Honor please, that if it is the news journal of the trade, it would have some relevance in explaining the conduct of these people, even though it may be hearsay it is admissible to explain conduct.

Mr. Darby: May it please the Court, assuming that it was admissible, which we hate to assume, the magazine itself would be the best evidence of what it said, the question he asked him is completely irrelevant to this proceeding. If there is something relevant in the magazine, it would be the magazine and its contents that would be relevant.

The Court: Sustained.

Mr. Pelham: We except.

Mr. Goldthwaite: If you want to keep up with the orders of the FCC with reference and regard to stations and permits and licenses, where would you go for that information?

Mr. Darby: Objection, it is irrelevant.

The Court: Overruled.

A. I would go to Broadcasting Magazine.

Q. Have you done so through the years?

[fol. 180] A. Yes, sir.

Q. Are orders of the FCC published in this magazine?

A. Yes, sir.

Q. Now, did you see an issue in which there was a reference to the sale of WAIP?

Mr. Darby: Object again, Your Honor, if there was such a thing and if it was relevant, first of all an order of the Federal Communication Commissions as referred to that would be the best evidence. As Your Honor knows newspapers frequently don't give stories straight, sometimes on purpose and sometimes otherwise. If there was such a thing that would be relevant here it would be the magazine article itself and not what this witness may have read at some time in the past.

The Court: Overruled.

A. There was.

Q. Do you remember the date of the issue of the magazine?

A. It was August, 1962, issue.

Q. August, 1962, issue?

A. Yes, sir.

Q. What did it say with reference to this—

Mr. Darby: Objection.

The Court: Sustained.

Mr. Goldthwaite: I think that is all at this time. Just a minute. What was the condition of this equipment at the time the station WSIM took it over from WAIP?

A. It was in fair condition, meeting FCC specifications.

Mr. Darby: We object to conclusion, "meeting FCC specifications".

The Court: Sustained.

Mr. Goldthwaite: Was it new or old?

A. It was old.

Q. Did you have any trouble keeping it in operation?

A. No, sir.

Q. Did it have any eccentricity?

A. Yes.

Q. What sort of eccentricity did it have?

A. On cold, damp mornings it was hard to get the thing to come on the air unless you left the filaments on from the previous night to keep moisture baked out.

Q. Each set, does it have a different personality from [fol. 181] every other set, Mr. Fridge, or not?

A. All that I have had anything to do with have.

Q. This particular equipment had some peculiarities in the way it performed?

A. Yes, sir.

Q. Were these peculiarities you could tell by just turning it on or that any Engineer could pick up on the first attempt to operate?

A. No, sir. They did not display themselves immediately to me. I learned of them over a period of time.

Q. What was the condition of the equipment with reference to how it was wired up?

A. It was in good shape.

Q. Wire up—

A. It was wired up properly.

Q. Neatly?

A. No, not so neatly. I could not get the money to do the rewiring that needed to be done to it; however, it was wired safely and it was wired so that there was no hazards to life or fire or any such—

Mr. Howard: I'm going to move this be stricken as to whether it was proper or safe or any hazards to anyone, conclusion on the part of the witness.

The Court: Motion denied.

Mr. Goldthwaite: What was its condition as concerning cleanliness?

A. It was in old but clean condition when I left it.

Q. What happened to this equipment when it is used over a long period of time, Mr. Fridge?

A. It becomes dingy from heat, from internal components and dissipation of power in the form of heat, paint becomes dull, it is like any piece of machinery or electronic gear as it ages, it looks aged.

Q. Does the FCC have any regular inspection on equipment?

A. No, sir. Not regular.

Q. What do they do?

A. They come in unexpectedly.

Q. Do they make inspections?

A. Yes. They do.

Q. Was your WAIP inspected?

A. It was inspected Sepetmber of the previous year from the sale.

[fol. 182] Q. Was there a change in the condition of the equipment from September of 1961 to July 31st, 1962, other than the normal aging of a year?

A. There were a few changes made in wiring of some the audio inputs. I was ordered by the Manager of the station to set up a completely separate recording booth so that production commercials could be made, and I wired the equipment up as specified.

Q. Do you know what—what do you have to do to get—what is your—you are not licensed?

A. Yes, sir.

Q. What is this license called?

A. It is called FCC, which is Federal Communications Commission, Radio, Telephone First Class Operators license.

Q. What do you have to do to get that license?

A. I had to take the examinations that were given by the Federal Government.

Q. How many examinations?

A. A total of three.

Q. How long does it take?

A. Do you mean the actual examination itself or preparation before the examination—

Q. No. How long does it take to take the examination?

A. I would say a total of about four and a half or five hours.

Q. Who gives them?

A. The FCC Field Office in the locality.

Q. How does it take—how long does it take you to prepare to take these examinations, or did it take you?

A. Well, depending upon the individual.

Q. How long did it take you?

A. I would say off hand from the time I was nine years old until I was first licensed.

Q. Did you have some other sort of FCC license in the meantime before you got your First Class Technician's license?

A. Outside of the novice amateur radio operator's ticket, no, sir.

Q. You had ham licenses all through the period?

A. I had a novice license at one time.

Q. Novice. Does FCC have certain rules about the operations of commercial broadcasting stations?

[fol. 183] Mr. Darby: May it please the Court, I would object on the grounds that it is not relevant to the plea in abatement what the FCC rules are.

Mr. Goldthwaite: I agree to that, they brought it up though. I don't know what the condition of the equipment had to do with it, but they claim this boy didn't do a good job and I'm just trying to show he's a thoroughly compe-

tent technician. I don't think it has anything to do with the case either.

Mr. Darby: May it please the Court, it may be that we would demand much more than the Federal Government would of one of our employees, so what the Government would demand might not be proper.

The Court: Overruled. Does the FCC have certain rules—

A. Yes, sir. They do.

Q. These examinations treat with those rules?

A. Yes, sir. In part they do.

Q. Does the FCC have rules as to the safety of equipment?

A. Yes, sir. Those are called the Good Engineering Standards and Practices.

Q. Do you have to keep a log with reference to your maintenance on this equipment?

A. Yes, sir.

Q. Does the FCC inspect that log?

A. Yes, sir.

Q. Was your equipment kept in accordance with those?

A. Yes, sir.

Q. Now, was anything said sometime in the conversation between you and Mr. Hale or Mr. Stevenson concerning the transfer of equipment to or from the WAIP station?

A. Mr. Stevenson mentioned transfer of equipment.

Q. When was that?

A. The 31st of July.

Q. Where were you, where was he?

A. We were at the station. He was looking over the inventory of equipment. I was going over the inventory of all equipment with him; he came across some test equipment which he said he was going to take to Montgomery with him in as much as the equipment up there was not nearly so portable or modern.

Q. Was there any conversation about bringing in or taking out or exchanging any other equipment besides the test equipment?

[fol. 184] A. Yes, sir. He brought in some equipment from Montgomery, the only piece of which I remember spe-

cifically was a Concertone Series 500 Tape Recorder which he said would be needed in conjunction with the existing equipment at the station.

Q. Did he say where he got that?

A. Yes. He said he brought it from the Montgomery station.

Mr. Goldthwaite: He's with you.

On Cross examination.

By Mr. Darby:

Q. Mr. Fridge, who was the half technician?

A. Mr. John Clonts.

Q. When was he employed by WAIP with respect to the time that WAIP ceased operations?

A. Mr. Clonts was employed several times during AIP's existence.

Q. All right, sir. But, during part of the time AIP existed, they didn't have but one technician, and that was you?

A. No, sir. At no time while I was working there was there one technician.

Q. Who was the technician other than you at the time WAIP ceased operations?

A. John Clonts.

Q. And, how long had he been working there at that time?

A. Roughly two years.

Q. Was he a member of the management?

A. I don't understand.

Q. Do you know whether he got paid for his work or not?

A. I assume that he did.

Q. You testified a little while ago that you knew he got paid when he worked overtime. Now, do you assume that he got paid?

A. I saw him cash pay checks.

Q. When?

A. I do not remember specific dates, sir.

Q. Did you see him cash any pay checks within the last two months that WAIP existed?

A. I could not say.

Q. Did you even see him?

A. Yes.

Q. Did you see him at the station?

[fol. 185] A. Yes. He was up three days before the station changed hands.

Q. What time did you report to work at WSIM on the day it commenced operations under Broadcast Service of Mobile, Incorporated?

A. Roughly 9:00 in the morning.

Q. What did the station go on the air that day?

A. 4:00 in the morning.

Q. Did you receive severance pay from WAIP?

A. No.

Q. It's your testimony that you received no severance pay from station WAIP when it ceased operation?

A. I applied for it but did not receive it.

Q. You didn't receive a dime?

A. So far as I know.

Q. You didn't sign a receipt for severance pay?

A. No, sir. I signed a receipt for back wages and vacation that was due me; I applied for severance pay and was denied it.

Q. To whom did you apply for severance pay?

A. I applied to Mr. Gene Miller and also to Mr. Howard who was handling the accounts.

Q. Mr. Howard, that is the lawyer sitting over here to whom you applied to?

A. Yes, sir.

Q. You were terminated by station WAIP, were you not?

A. I stated so.

Q. Now, what is it that lead you to assume that you would be employed by station WSIM on the day they took operations, if anything?

A. I had been employed previously in my career working for a business that changed hands and continued my job.

Q. And, that was the basis of your assumption?

A. Yes.

Q. What time did you report to work the last day you worked for WAIP?

A. 9:00 in the morning.

Q. Is that your regular starting time?
A. Yes.
Q. Who put the station on the air?
A. That was put on the air by the announcer on duty.
Q. The announcer put the station on air?
A. Yes, sir.
[fol. 186] Q. Was the announcer a technician?
A. He was required by the—
Q. I didn't ask you what he was required to do, I asked you was he a technician?
A. No.
Q. But, he put the station on the air at 4:00?
A. Yes, sir.
Q. Then, you would come in at 9:25, you say?
A. Roughly 9:00.
Q. What days of the week did you work?
A. Monday through Friday.
Q. And, from what hours?
A. Nine until five.
Q. On each occasion, did the announcer put the station on air about sunup or at 4:00?
A. That was the general practice.
Q. He was not a technician?
A. No.
Q. Who would sign the station off the air at WAIP?
A. An announcer.
Q. At what time would the announcer sign the station off the air?
A. At local sundown.
Q. Now, this man that was supposed to have been the half technician, when did he work?
A. His schedule was arranged by the Chief Engineer.
Q. As a matter of fact, you were Chief Engineer, were you not?
A. No, sir. I was not. The Chief Engineer's pay was specified at a much higher rate of pay than I was obtaining.
Q. Now, how much more was Chief Engineer's rate of pay than yours? If you know.
A. It was $25.00 a week more.
Q. And, how much did you make at the time?
A. One hundred and twenty dollars a week.

Q. And, how much did the Chief Engineer make?

A. I assume he made $145.00.

Q. And, who was he?

A. Mr. Eugene Miller I was told.

Q. Now, who told you Mr. Miller was the Chief Engineer?

A. Mr. Miller.

[fol. 187] Q. He told you that?

A. Yes.

Q. Now, did Mr. Miller have a license?

A. Yes.

Q. Did Mr. Miller operate the station?

A. He had.

Q. Did he operate it while you were employed as an Engineer and this announcer was turning the station on in the morning and another was turning it off in the evening?

A. On occasions, on the days I was not scheduled, he would be called.

Q. Mr. Miller would be called?

A. Yes.

Q. So, on those days this half engineer was not working?

A. I did not arrange the schedule.

Q. All right. Do you know who this half engineer—when this half engineer was supposed to have worked.

A. He worked with me some on maintenance.

Q. And, what other time?

A. On call-ins.

Q. And, what other times?

A. On remote broadcasts.

Q. What other times?

A. I do not know his entire schedule.

Q. You don't know who worked at the station on Saturday and Sunday, if you know, when you were off?

A. I was not scheduled there.

Q. I asked you who worked it when you were off, if you know?

A. I assume that either Mr. Miller or Mr. Clonts.

Q. Or perhaps no one worked it, is that correct, as far as a technician was concerned?

A. The station was licensed for remote control broadcast without the use of a technician on duty at all times.

Q. Now, let me see if I can refresh your recollection. May the record show that I am handing the witness a complaint in the case entitled E. W. Jemison, et al, Radio Broadcast Technicians, 56,748-Mc and I have the Court's official file to refresh the witness' recollection. Mr. Fridge, I show you Paragraph 12 of the complaint in the matter that I just referred to and ask you reading that paragraph if it does not say this, "Respondent has picketed WLIQ's [fol. 188] office and WLIW's transmitter periodically from September 14, 1961. Respondent's picketing was conducted by the following persons among others, Dave Fridge, who is employed as Chief Engineer at radio station WAIP, Prichard, Alabama." Is that correct? What that piece of paper says.

Mr. Goldthwaite: Your Honor, what somebody else may have said in another proceeding is not binding on this Respondent.

Mr. Darby: Well, now, I haven't finished my examination, Your Honor.

Mr. Goldthwaite: You asked a question.

Mr. Darby: Get this in the record, don't this say as I have read? Did I read it correctly, Mr. Fridge?

A. You read it correctly, however,—

Q. Just answer my question, if you would, please.

A. You read correctly from that transcript.

Q. All right, sir.

Mr. Goldthwaite: If Your Honor please, I object to Mr. Darby referring to a complaint in some other case unless the thing is put in evidence or identified properly showing it has some connection with this proceeding.

The Court: I don't see where it has any connection, but—

Mr. Darby: I'll tie it up in just a moment, Your Honor.

The Court: I'll let him go ahead and do it.

Mr. Goldthwaite: That's all right, but I don't want to be bound by what Mr. Darby claims the facts are in some other case that is either being litigated or has been dismissed.

Mr. Darby: Mr. Fridge, I show you—he's a member of this organization, I think, Your Honor—I show you what purports to be an answer in that same case, No. 56,748,

which purports to be signed by Adair, Goldthwaite and Stanford by Mr, Goldthwaite, and purports to be sworn to by one H. D. Smith, and I refer you there on, if you please, to Paragraph 12 thereof, and does it not read, "Paragraph 12 is admitted." Is that correct?

A. It reads that there.

Q. Does the—the quotation with respect to you is from Paragraph 12, is that correct, as being "Dave Fridge, who is employed as Chief Engineer at radio station WAIP, Prichard, Alabama." Is that correct?

A. It is correct.

[fol. 189] Q. I'll ask the Reporter to mark as Complainant's Exhibit No. 1 for identification which purports to be an undated notice and envelope with the date of March 25, 1963, 7:30 P. M. purporting to have the seal of the International Brotherhood of Electrical Workers, Local 1264, imbedded therein.

(Whereupon, said undated notice and envelope dated March 25, 1963, 7:30 P. M. was received and marked for identification, "Complainant's Exhibit 1".)

Q. Mr. Fridge, you are still a member, are you not, of Radio Broadcast Technician's Local Union No. 1264?

A. No, I am not.

Q. When did you cease to be a member?

A. When I could no longer pay dues.

Q. When was that?

A. If I remember correctly, it was in December of this past year.

Q. Mr. Fridge, would you tell us again what was said, that you said Mr. Hale said to you about being on call?

A. He told me I could assume to be on call, and if they needed me they would call.

Q. When did he tell you that?

A. He told me that the morning of August 1st in the presence of Mr. Smith and Mr. Averett when we called on him.

Q. All right, sir. Now, do you recall making an affidavit which you signed on about the 12th day of September, 1962?

A. I don't remember the exact date, I remember signing an affidavit.

Q. Did you set forth fully the conversation in that affidavit that you had with Mr. Hale to the best of your recollection at that time?

A. No, sir.

Q. Did you leave part of the conversation out?

A. We hit on the specific important details.

Q. With whom—you said "we hit on the specific important details" the things you included in that affidavit, who was it that decided what was specific and important.

A. I did.

Q. You made that determination. Now, when you said "we did" who else was you referring to besides yourself?

A. Myself and the secretary to whom I dictated it.

[fol. 190] Q. You dictated the affidavit?

A. Yes, sir.

Q. To whom did you dictate it?

A. Mr. Pierre Pelham's secretary, I think it was.

Q. Was anyone other than you and the secretary present when you dictated the affidavit?

A. Yes.

Q. Who else was present?

A. Mr. Morgan Stanford.

Q. And, it is your testimony that you dictated all of the affidavit or did somebody else dictate part of it for you?

A. I had guidance as to legal phrasiology, where it was needed.

Q. Where was legal phrasiology needed in it, would you mind telling me?

A. I am not a lawyer, sir. I was told where it was needed.

Q. Well, was it needed—where were you told it—

A. It was just general form, I was told.

Q. You didn't put anything in that affidavit about being told to stand by on call, did you?

A. No, sir.

Q. That wasn't important?

A. It didn't seem so at the time.

Q. Since that time, when did it become important?

A. So far as I was concerned when I was asked a question.

Q. When were you asked—that was the first time when you were on the witness stand. Was that the first time you discussed being put on call with anyone?

A. No. It was talked over amongst the members of the Union at the time.

Q. And, that would be back before September of last year?

A. Yes, sir.

Q. That was when it was talked over amongst the members of the Union, at the time the conversation occurred?

A. Shortly thereafter. There was an Executive Board meeting.

Q. Let me ask you this. Was Mr. Smith present in the room with you when you dictated this affidavit to Mr. Pelham's secretary in the presence of Mr. Morgan Stanford?

A. I don't remember.

[fol. 191] Q. Who else was there other than the Secretary, Mr. Morgan Stanford and yourself?

A. Those are all I remember present.

Q. Were you present when Mr. Smith dictated his affidavit, if he dictated an affidavit?

A. No, sir.

Q. Were you present when Mr. Burns gave his affidavit, if he gave an affidavit?

A. No, sir.

Q. Were you present when Mr. Averett gave an affidavit? If he did.

A. No, sir.

Q. Now, did Mr. Smith—Mr. Smith was there with you when this conversation occurred about you being on standby, was he not?

A. That's true.

Q. Mr. Averett, he was there too?

A. Yes, sir.

Q. You don't know whether they consider that important or not?

A. Would be a matter of opinion.

Q. Have you discussed it with anybody other than the Union members you were talking about, back last September about the importance of being put on standby?

A. I believe it was brought up in a conversation between myself and Mr. Morgan Stanford.

Q. And, that was while you were giving your affidavit?

A. No, sir. That was after the preliminary hearing.

Q. After the hearing and not before?

A. Yes, sir. That's true.

Q. Anyone else?

A. Outside of members of the family in which it might have come up in casual conversation, no.

Q. Now, you say you stood by for about a month?

A. Yes, sir.

Q. As a matter of fact, you started picketing just a few days after that, did you not?

A. Yes, sir.

Q. Were you standing by while you were picketing?

A. Yes.

Q. You wanted a job when you were picketing, did you not?

[fol. 192] A. I was concerned with feeding my family, yes, sir.

Q. And, you wanted a job with WSIM, did you not?

A. I didn't say that.

Q. I asked you though. Did you not?

A. Had some amicable agreement been made between the station, the union and all parties concerned that would put me back to work, I would have gone back to work.

Q. That was one of the things you were picketing for, to go back to work, was it not?

A. No, sir.

Q. That didn't have anything to do with it?

A. No, sir.

Q. Did Mr. Morgan Stanford tell you why you were picketing?

A. No, sir.

Q. Who told you why you were picketing, if anybody did?

A. I was picketing for the same reason I had picketed other radio stations.

Q. How many radio stations have you picketed at?

A. Three.

Mr. Pelham: I object to that Your Honor. It is incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Pelham: Move to strike the answer.

The Court: Granted.

Mr. Darby: Mr. Fridge, did you attend a union meeting where the union members themselves voted not to enter into a contract with WSIM unless they re-employed you?

A. No, sir.

Q. You didn't attend any such meeting?

A. No, sir.

Q. Did you hear of such meeting?

A. No, sir.

The Court: Mr. Darby, I want to take about a five minute recess as soon as you reach a point where you can be interrupted.

Mr. Darby: This is good enough Your Honor I just picked up another piece of paper.

The Court: Thank you. We will be in recess five minutes.

(Recess)

[fol. 193] Mr. Keith Glatzer, a witness on behalf of the Complainant, by agreement of the parties was taken out of turn, and after having been duly and legally sworn, testified as follows:

On Direct examination.

By Mr. Howard:

Q. You are Mr. Keith Glatzer?

A. Yes, sir.

Q. Mr. Glatzer, you were employed by radio station WSIM on or about the first of August, 1962?

A. Yes, sir. I was.

Q. And, you filed an affidavit with this Court—

A. I beg your pardon?

Q. I'll withdraw it. Now, do you know Mr. David Fridge?

A. Yes, sir. I do.

Q. Is he the gentleman that was just up here and sat down and you took his place, or did you see him?

A. I was out of Court sir, I couldn't say.

Q. All right. Now, do you recall seeing Mr. Fridge on or about the 31st of August of this year? That is, 1962.

A. I saw Mr. Fridge several times.

Q. All right, sir. Now, do you recall seeing him in the Coffee Cup Restaurant in Prichard on or about that date?

A. To the best of my knowledge, yes, sir.

Q. Where is the Coffee Cup Restaurant?

A. It is located downstairs immediately adjacent to the building which WSIM Broadcast facilities are located in.

Mr. Darby: May Mr. Fridge be excused, Your Honor?

Mr. Goldthwaite: No, he may not. He was party to the case.

Mr. Darby: Oh, I beg your pardon.

The Court: I'm pretty sure he is. I have excused all the parties from the rule. If Mr. Fridge is party Defendant—

Mr. Darby: Excuse me, Your Honor.

Mr. Howard: Prior to seeing him in the Coffee Cup, have you seen Mr. Fridge on other occasions at or near the radio station?

A. I saw Mr. Fridge for the first time the first day I arrived in Prichard which was the day before WSIM took the air with those call letters, which would have been the 31st of July.

Q. All right. Did you on occasion see him in front of the radio station during the picketing in front of the radio station?

[fol. 194] A. I saw him in the vicinity at the time of the picketing.

Q. Yes, sir. Did you see who he was in the company of, if anyone?

A. He was in the company of people whom I did not know.

Q. What were those people doing?

A. Some of the people with whom he had conversation were in the picket line, some were not.

Q. All right. Now, when you saw Mr. Fridge in the Coffee Cup, did you ask him any questions?

A. We had a conversation. I could not testify to that conversation at this late date without refreshing my memory on the situation.

Q. Do you know the substance of the conversation that you had with him, what Mr. Fridge said, if anything, with reference to what the union was doing or what he was doing?

A. The conversation in general as I remember it, and this again, Your Honor, is to the best of my recollection, was about radio and about WSIM and about whether or not the station could be made to pay under circumstances it was broadcasting under.

Mr. Pelham: Whether the station could be made to what?

A. Made to pay for itself, made profitable.

Q. Now, did he tell you anything about a letter to advertizers?

Mr. Pelham: Your Honor, please, he's leading his witness. He has already testified about the substance of the conversation.

The Court: Sustained.

Mr. Howard: All right, sir. Would you state the substance of the conversation—

Mr. Pelham: I object to that Your Honor. He has already answered that question as to the substance of the conversation.

Mr. Howard: Just state what was said as you recall, please, sir.

Mr. Pelham: Some objection on the same ground. He asked him a question as to what the substance was and he has answered that question.

The Court: Overruled.

Mr. Howard: Would you answer my question, please.

A. Would you repeat it, please?

The Court: State what was said as you recall it.

A. Again, I must beg the Court's pardon, this was such a time ago, that if I could refresh my memory; I made a deposition to this Court in the first proceeding and that was

in the case of a temporary injunction. If I might have a [fol. 195] copy of that I would affirm whether it was conversation or not. But, I would not trust my memory at this late date to say exactly what was said otherwise.

Q. All right, sir. Could you tell us what you recall of that conversation?

A. I recall that a letter was mentioned.

Q. All right, sir. And, what about the letter?

A. And that it had been—the letter that was mentioned had been sent or hand delivered in one case or another to various potential advertisers of the radio station with which I was employed. Contents of the letter was not made known to me.

Q. All right, sir. And, did Mr. Fridge tell you what the purpose of the letter was?

A. He—

Mr. Goldthwaite: Your Honor, he is leading, let the man say what the conversation was.

The Court: Overruled.

Mr. Howard: Did he say what the purpose was, Mr. Keith Glatzer?

A. The purpose of the letter I gathered from the conversation—was more than one person present, the man I cannot identify that was with Mr. Fridge—the purpose of the letter was to prevent or influence, I gathered from that conversation, advertisers not to advertise on the station as long as the station was involved in a dispute with the local union of the IBEW.

Q. All right, sir. Now, was anything said about the survival of this radio station?

A. I don't believe I can quote the exact words. I got the impression from the conversation—

Mr. Pelham: I've going to object to that Your Honor.

The Court: Sustained.

Mr. Howard: Not impression, but the substance of what was said about the survival of the station.

A. Excuse my choice of words, I believe the word would be the "conclusion" of the conversation—

Mr. Howard: No, sir. Not the conclusion, but the substance.

The Court: Now, this witness finds himself in kind of a tough spot. He has already said he does not remember very clearly what was said. And, now, he is being asked to tell his conclusion or his substance. You don't have to answer these questions. If you can't remember, you are supposed [fol. 196] to tell us you can't remember. Now, if you can remember you are entitled to state the conversation as best you can. But, if you are unable to remember, then you don't have to answer the question.

A. I am unable to remember the exact words of conversation, Your Honor. The substance as you call, the substance of the conversation, one of the conclusions, not my conclusions, but one of the conclusions that was drawn—

Mr. Howard: No, sir. No conclusions, just the substance, please.

A. If it please the Court, I would like to clarify for just a moment. We were discussing something among us.

Mr. Howard: What were you discussing?

A. This was the situation the station found itself, the situation of the letter. We were discussing it, and as in all discussions, at least in my mind, they eventually lead to a conclusion which was agreed among us—not agreed—but in that context I would like to say that the conclusion or the substance of the conversation, pardon me, that the station would not be able to survive under this pressure from the union itself.

Q. And, that was the substance of what Mr. Fridge said?

A. Yes, sir.

Mr. Pelham: If Your Honor please, he is leading the witness. The witness started off saying he did not remember that conversation out there and he has lead him into testifying. This is the third aspects of that conversation, that he has lead him into testifying.

Mr. Howard: Were you ever approached by any member of the union and asked whether or not you desired the union to represent you in any way?

A. No, sir. I was not.

Q. At that time, did you have any desire for the Local 1264 IBEW, that particular union, to represent you in bargaining?

Mr. Pelham: I object to that.

The Court: Sustained.

Mr. Howard: That's all.

On Cross examination.

By Mr. Goldthwaite:

Q. Where is your home?

A. My home is Hattiesburg.

[fol. 197] Q. When did you come over here?

A. Today.

Q. Back last fall?

A. I came here, it would have been the last week in July.

Q. Where—

A. A week before the station changed ownership.

Q. Where were you working just before you came over here?

A. I was at that time unemployed.

Q. Unemployed?

A. Yes, sir. I had been in Arkansas.

Q. Did you live in Hattiesburg at that time?

A. No, sir. I did not.

Q. You did not?

A. No, sir.

Q. Where did you come here from?

A. I came to this area—I lived in Fairhope. And, I came here from Arkansas.

Q. Who contacted you to come down here?

A. The Manager of the station, Mr. John Hale.

Q. How did he contact you?

A. By telephone.

Q. Where are you working now?

A. I am back in Hattiesburg.

Q. What station?

A. WFOR.

Q. Did you work over there with Charlie Holt?
A. No, sir. I do not.
Q. Did you leave this station and went over to WFOR?
A. Yes, sir. I did. I had previously worked for WFOR.
Q. You had previously?
A. Yes, sir.
Q. You know Charlie?
A. Yes, sir. Very well.
Q. What does he do in Hattiesburg?

Mr. Darby: Objection, it is irrelevant. It is completely outside the scope of his examination, Your Honor.

The Court: Cross-examination is not limited to the scope of direct examination.

Mr. Darby: I think in general it is, Your Honor. He's [fol. 198] just running all over the place, just as we were stopped ourselves when we were trying to—

The Court: I didn't stop you on cross.

Mr. Pelham: That is the law in Alabama, Judge.

The Court: That is the way I have been ruling throughout the trial and I am going to keep it up right or wrong.

Mr. Darby: I think Your Honor ruled on one of the questions that we—

The Court: I'll stop you on re-direct and I'll stop you on re-cross if you get outside the scope, but not on original cross examination. Overruled, go ahead.

Mr. Goldthwaite: What does Charlie Holt do in Hattiesburg?

A. To the best of my knowledge, Mr. Holt is the President or whatever top in the corporation of the Holt Broadcasting Service, Holt Enterprises.

Q. Holt Enterprises. Do they broadcast that over a radio over there?
A. I am not sure.
Q. You don't listen?
A. No, sir.
Q. Does he have a radio station there?
A. Yes, sir.
Q. What station is that?
A. Radio station WHSY.
Q. Have you ever had any dealings with that station?

A. As an employee?

Q. Yes. As an employee or otherwise.

A. No, sir. None other than the course of one station to another.

Q. Did you have any conversation with Holt about his other stations when you worked out here at WSIM?

A. To the best of my knowledge my conversations with Mr. Holt while I was in Mobile were strictly about the Mobile station.

Q. What conversations did you have with him about the Mobile station while you were here?

A. It would pertain to the daily operations of the station, how the records were played and like that.

Q. Did he talk to you about the daily operation of the station?

A. Yes. He did as far as I was concerned with it.

Q. How long did you work over here?

[fol. 199] A. I worked at WSIM until the first day of November.

Q. From the first of August to November, three months?

A. Yes, sir.

Q. How many times did Charlie Holt come over here during those three months?

A. I could not answer that.

Q. You were an announcer?

A. Yes, sir.

Q. How many times did he talk to you about your work?

A. I could not answer that. To the best of my recollection it was more than once.

Q. More than once?

A. Yes.

Q. What were the nature of the conversations you had with him?

A. Strictly about the operation of the station, how it sounded, how the records, how the equipment worked and things like that.

Q. Did he give you any suggestions about how you did your work?

A. Not me personally, no.

Q. Did he talk about how it ought to be done in general.

A. Generally how it could get better.

Q. How it could get better?

A. Yes, sir.

Q. Did you have any conversations while you were over here with Mr. Robinson from Montgomery?

A. I met the gentlemen once and had no conversation with him.

Q. Did you know who he was?

A. I didn't know when I saw him; somebody told me afterwards.

Q. When you were working over here, where did your pay checks come from?

A. My pay checks came from Hattiesburg.

Q. Who signed them?

A. Mr. Holt.

Q. Mr. Holt?

A. To the best of my knowledge.

Q. Did you know another officer from Hattiesburg with the station that came over here?

A. Yes. Mr. Lightsey.

Q. Did he sign the checks?

A. I don't recollect ever having noticed.

[fol. 200] Q. What was his job?

A. I do not know what his official position is. I know he is with Holt Broadcasting.

Q. Have you ever had any conversations with him about your work?

A. No, sir.

Q. About any other matter concerning the station?

A. No, sir.

Q. Do you know what the Holt Broadcast Service is?

A. As to the legal name, no, sir.

Q. Do you just know what I am talking about?

A. I know generally what you speak of when you say Holt Broadcasting Service.

Q. What am I speaking of?

A. The Broadcasting Service of the Holt Organization.

Q. What is the Holt Organization?

A. So far as I understand it, it comprises four radio stations.

Q. What are the four?

A. There is a station in McComb, WHHY in Hattiesburg, a station in Montgomery and WSIM.

Q. Do you know any other individuals that are interested in all four of these stations besides Charlie?

A. No, sir. I don't.

Q. Do you know what I mean when I say Holt Broadcast Group?

A. As the term applied to this, yessir I do.

Q. What does that mean?

A. This would be the group of stations.

Q. The same thing as Holt Broadcasting Service?

A. Yes.

Q. Did you hear that term used while you were an announcer down at WSIM?

A. Nor, sir. I did not.

Q. You did not. Either of those terms?

A. Holt Broadcasting Service.

Q. Yes.

A. Yes, sir. That was the term we heard, but not Holt Broadcast Group.

Q. Did somebody give you instructions to use that term in connection with your work in announcing?

A. I can't remember whether anybody gave me instruc-[fol. 201] tions to use it. I know it was used.

Q. Did you use it?

A. Yes, sir.

Q. How did you use it?

A. In station identification, on the air identification.

Q. On the air?

A. On the air for station identification.

Q. How did you use it? Do you remember the words you used?

A. I don't remember the exact words.

Q. Well, in substance, the best you can recall.

A. Normally, we would say, identify the station, and I think the station itself was identified as a member of the Holt Broadcasting Service.

Q. Did you ever state over the air what that service is, that is what the stations were?

A. No, sir. I did not.

Q. Did you work with—who was the Program Director out here?

A. At WSIM?

Q. Yes.

A. A gentleman by the name of Mr. Carlisle.

Q. Carlisle. Did you ever work with him in preparing the program schedule, making it up?

A. He did that himself.

Q. Did it all himself?

A. Yes, sir.

Q. Did any of the copy you were given to use in the announcements come from McComb?

A. I don't recollect.

Q. Any from Hattiesburg?

A. I don't recollect any.

Q. Any from Montgomery?

A. I don't recollect any.

Q. Mr. Carlisle, as far as you know, prepared all the material to be used in the announcing?

A. Yes, sir.

Q. I show you a copy of an affidavit which is styled, Broadcast Service of Mobile, Inc., Complainant against Local 1264 IBEW and William Rayburn, Dave Fridge and H. D. Smith, and ask you if that, that is case No. 58,568-H in the Circuit Court of Mobile County, Alabama, and ask [fol. 202] you if that is your signature appended to that document?

A. Yes, sir. It is.

Q. Is this the affidavit that you made previously for use in this case?

A. I believe. I would have to read it.

Q. Would you please read it and see if it is.

(The Witness reads the document)

A. Yes, sir. This is the affidavit and the one I referred to in direct examination.

Q. The one you called your deposition?

A. Yes, sir.

Q. Now, this affidavit, you state you asked—you state, "I asked Dave Fridge about whether the letter which the IBEW had been sending to Merchants in the Mobile—

Prichard area was in his opinion something that was legal or whether it constituted a secondary boycott." Is that correct?

A. Yes, sir. That is correct.

Q. And, you state then, "Fridge told me it was perfectly legal. That, as a matter of fact, his union had helped write the law to make it legal." Is that right?

A. Yes, sir. He did.

Q. Did he elaborate on what he meant by that the union had helped write the law to make it legal?

A. No, sir. He did not.

Q. He told you he thought it was legal?

A. Yes, sir. He told me that he thought it was legal.

Q. You were working in the station during the period of time when they were picketing the studio, the IBEW were.

A. Yes, I was.

Q. Were there conversations that went on in the station about what the policy of the Holt Broadcasting Group was with reference to having unions represent their employees?

A. Not to my knowledge.

Q. You don't remember any?

A. I don't remember any such conversations at all.

Q. You are not a technician?

A. No, sir. You couldn't classify me as a technician.

Q. You don't have a First Class Operator's license?

A. No, sir. I don't.

[fol. 203] Q. No one asked you to join the technician's union?

A. No, sir. Nobody did.

Q. In this conversation with Dave Fridge on August 31st, did Dave say anything to you about that the union had contacted the same sort of a letter campaign in picketing the radio station WKRG for eighteen months some time in the past, and the National Labor Relations Board had ruled that conduct legal?

A. No, sir. I don't believe that ever entered the conversation.

Q. He didn't mention WKRG?

A. To the best of my knowledge it did not enter the conversation.

Q. How about, did he mention the ruling of the National Labor Relations Board that this conduct was legal?

Mr. Darby: Objection. There is no evidence that the National Labor Relations Board did rule—

Mr. Goldthwaite: I didn't ask him that. I asked him if the boy mentioned it.

A. To the best of my recollection, there was no such mention in the conversation.

Q. Did he mention someone else, some other organization or person had ruled that this conduct was legal?

A. No, sir. To the best of my knowledge, he did not.

Q. He just told you he thought it was legal?

A. Yes, sir.

Q. And, that the union had helped make the law that said it was legal?

A. Yes, sir.

Q. Did you mention to Fridge on this occasion that, you knew Clinton Bryan?

A. Is that two questions or one?

Q. I withdraw the question. Did you know Clinton Bryan on August 31st, 1962?

A. On August 31st?

Q. Yes.

A. One month after the station went on the air?

Q. Yes. The day you were talking to Dave Fridge.

A. Yes. I knew Clinton Bryan at that time.

Q. Who was Bryan?

A. At that time he was the Engineer employed by the station.

[fol. 204] Q. How long had he been employed there?

A. I am afraid I can't recollect the dates.

Q. To the best of your recollection.

A. He had been there about as long as I had been there.

Q. Do you remember that you said to Fridge in that conversation that Clinton Bryan had made an application and paid an initiation fee to a union, but you did not know what union it was?

A. Are you asking me?

Q. Yes. I am asking you if you didn't have a conversation in which that was the substance with Fridge?

A. I don't recollect it. I'm sorry.

Q. Do you recollect a conversation where that subject was mentioned, the subject of Bryan joining a union?

A. No, sir. I don't recollect such a conversation.

Q. You don't remember telling—you do remember telling—I mean, you remember Fridge telling you that he didn't care what union Bryan belonged to, don't you?

A. I don't recollect a conversation with Mr. Fridge about Mr. Bryan at any time.

Q. Do you recall him telling you the picketing was not for the purpose of organizing station WSIM but to protect the working conditions of technicians at other stations, don't you?

A. I don't recollect any such conversation.

Q. Didn't he tell you that in substance?

A. I don't recollect it.

Mr. Godthwaite: I think that is all I have.

Mr. Howard: Could I see the Court file, please, with Mr. Glatzer's affidavit in it?

Mr. Goldthwaite: If your Honor please, I am going to object to this affidavit being used in the re-direct examination of the witness. He has seen the affidavit and refreshed his recollection and if he has a recollection or memory, he can testify from memory on direct examination.

Mr. Howard: Mr. Goldthwaite read portions of that affidavit—

The Court: Well, now, all you asked is if you could see the Court file, and the Court is certainly going to grant you that.

Mr. Howard: Thank you, sir.

On Re-direct examination.

By Mr. Howard:

[fol. 205] Q. Now, Mr. Glatzer, Mr. Goldthwaite asked you about your affidavit and showed you what purported to be a copy of that affidavit; to refresh your memory and in my direct, I did not present you with the affidavit, but at the time you made this affidavit, was your memory clearer than it is today?

A. I would think so, yes, sir.

Q. Now, did you look—would you look at the signature—

Mr. Goldthwaite: Your Honor please, I object to being shown the affidavit on direct examination.

Mr. Howard: I am on re-direct and you took it up on cross.

Mr. Goldthwaite: I have a right to question the witness on cross examination, and he read the affidavit on cross examination, but he doesn't have any right to lead him by showing the affidavit on direct examination. My cross-examination dealt with the subject of direct examination of this witness as respects this. Now, showing him the affidavit on re-direct examination is nothing more than leading the witness into saying things that he probably couldn't recall otherwise. If he has a recollection, he can testify.

Mr. Howard: My one purpose is to find out whether or not Mr. Glatzer's statement relative to whether or not the station would be able to survive as stated by Mr. Fridge, whether or not that is confirmed in detail by his affidavit at the time he actually made it.

Mr. Goldthwaite: If Your Honor please, you have not ruled on my objection.

The Court: I sustain your objection.

Mr. Goldthwaite: I'll ask that the last question be stricken as leading.

The Court: Motion denied.

Mr. Howard: I'll ask you whether or not Mr. Glatzer you had an oportunity, or whether you did in fact, not an opportunity, but whether you did read the affidavit that was presented to you on cross by Mr. Goldthwaite.

A. I did not read it word for word, I glanced at it.

Q. Did you read any portion of it relative to what you said to—Mr. Fridge said about the survival of the station.

The Court: I did not understand that.

Q. Did you read anything about Mr. Fridge's statement about the survival of the station?

A. I saw the words in there, yes, sir. I was asked by the [fol. 206] counsel to identify the paper and I did that.

Q. And, you read your statement about what Mr. Fridge said about—

Mr. Goldthwaite: I object to the lawyer telling the witness what was contained in the statement. He is leading him.

The Court: Sustained.

Mr. Howard: I'll ask you whether or not the following—now, was Mr. Bryan working for the station at the time you talked with Mr. Fridge about what Mr. Fridge was doing to the station?

A. To the best of my knowledge, he was.

Q. And, you said that you and Bryan started to work about the same time?

A. Yes, sir.

Q. Was that before you had conversation with Fridge?

A. Yes, sir. It was.

Q. All right, sir. Now, at the time, along about this time, was Mr. Fridge, did you see him in the picket line?

A. I saw him in the vicinity of the picket line.

Q. And during this time he stated to you that the station could not survive this or—

Mr. Goldthwaite: I object to this. I don't think that that is what the witness testified.

Mr. Howard: Could we go back to what the witness said?

The Court: No. We can't go back.

Mr. Howard: Do you recall now exactly what Mr. Fridge said about the survival of the station?

Mr. Goldthwaite: I object to leading—I don't recall that the witness testified Mr. Fridge said anything. He said there was a conclusion among the people there that the station couldn't survive, and that is all he testified to.

The Court: Overruled.

Mr. Howard: Now, at the time Mr. Fridge was talking to you about the picketing of the station, did he say anything about being on standby?

A. I do not recollect that.

Mr. Howard: All right. That's all.

The Court: You may step down. Thank you.

Mr. Glatzer: Thank you, Your Honor. May I be excused from this case?

[fol. 207] Mr. Howard: Your Honor, we are through with this witness.

The Court: All right, sir. You are excused.

Mr. Darby: Do you want us to start with Mr. Fridge, Judge, or do you want to recess until tomorrow? I notice it is about 5:00.

The Court: Go ahead and let's work a little past 5:00.

Mr. Darby: All right, sir.

MR. DAVID FRIDGE, a witness for the Defendant, already having been duly and legally sworn, resumed the stand and testified as follows:

On Further Cross examination.

By Mr. Darby:

Q. Mr. Fridge, when you were terminated at Prichard Broadcast Company, Inc. that operated WAIP, how much money did they pay you?

A. Roughly $1200.00.

Q. Now, as a matter of fact, was not that computed in your presence to include the following things by Mr. Howard? Severance pay, three weeks at $120.00 a week?

A. I do not remember the figures exactly, sir. All I remember is the total and the hassle that I had with Mr. Miller at the time over whether or not I was going to be allowed to have the severance pay that I was guaranteed under the contract that existed between Prichard Broadcasting Company and Local 1264, and I was told that I was not, nobody else was receiving it and that was it.

Q. Now, who else was under that contract besides you, if you please, Mr. Fridge?

A. Mr. Clonts.

Q. That is the Mr. Clonts that you don't know when worked, is that correct?

A. That is true.

Q. All right. And, who else was under it, if anybody?

A. We were the only two technicians working under the contract.

Q. As a matter of fact, you weren't watching Mr. Clonts work at that period of time, were you?

A. I assumed that he was a good enough technician, having been hired by the management, he didn't need watching.

Q. But, you didn't watch him work, did you?

A. No, sir. When we worked together we worked mutually, when we worked separately, we worked separately.

Q. He hadn't worked with you recently when the station terminated, had he?

[fol. 208] A. Yes. Within the last two or three weeks.

Q. As a matter of fact, did you not also receive vacation of three weeks?

A. I received accumulated vacation pay.

Q. You did receive the vacation—

A. Yes, sir.

Q. And, is it your testimony that you did or did not receive severance pay?

A. I was told by Mr. Miller that the money I was receiving did not include severance pay.

Q. What did it include?

A. It included my back pay that I was owed by the station plus the accumulated vacation.

Q. Now, how much back pay did WAIP owe you?

A. I am not sure, at this present time. At the time I had it computed pretty well down to the last penny.

Q. But, you don't have that any more?

A. Not on me.

Q. It's your testimony that WAIP didn't pay you?

A. They paid me in part the money that I was owed.

Q. And, what did they do with the other part of it?

A. That, sir, is anybody's guess.

Q. They didn't give it to you?

A. No. They most certainly didn't.

Q. So, you didn't make $120.00 a week working for WAIP, you made something less, is that correct?

A. Well, sir. I don't follow your reasoning.

Q. You were not paid $120.00 a week, were you, Mr. Fridge?

A. Not consistently on time, no.

Q. As a matter of fact, you weren't ever paid all you thought you were due under what you thought was the union contract, were you?

A. I did not receive severance pay that the contract called for.

Q. Are you telling the Court that you received all your salary, or whatever you called it, of $120.00 a week?

A. I assume at this late date that I did.

Q. You assume it. You don't know?

A. As best I can remember I received my pay and my vacation pay but not any severance pay.

[fol. 209] Q. Isn't it true that at the time you were terminated, you signed on about August 21st, 1962, a receipt?

A. I signed some sort of release.

Q. Now, as a matter of fact, you did have an argument with the person that had that receipt and on the basis of your argument the amount you were given was substantially raised over what was originally on it, was it not?

A. That is true.

Q. That was based on your contention that you were due some back time and severance pay, was it not?

A. It was based on the contention that I was due around $1600.00 of which I alternately got an amount somewhere in the vicinity of $1200.00.

Q. And, you released the Company from any balance at that time?

A. Yes. I was told by counsel at that time that I was lucky to get that and to take it.

Q. And, you did that?

A. Yes, sir.

Q. I'll ask the Reporter to mark as Complainant's Exhibit No. 2, what purports to be a receipt.

(Whereupon, the above mentioned document dated 21 day of August, 1962, was received and marked for identification, "Complainant's Exhibit 2".)

Q. Mr. Fridge, I'll hand you what has been marked, "Complainant's Exhibit 2" and ask you whether or not that is a receipt that you signed and bears your signature?

A. Yes, sir. That was a receipt for the money I received. I see that is a little less than I remembered.

OFFER IN EVIDENCE

Mr. Darby: I offer Complainant's Exhibit No. 2 in evidence.

Mr. Goldthwaite: No objection.

CLERK'S NOTE:

Complainant's Exhibit 2—Release signed by David S. Fridge, Jr. has been omitted from the record here. Please see side folio 48, printed page 42.

[fol. 210] Mr. Darby: Now, Mr. Fridge, you are acquainted with the fact that people other than technicians have been admitted to Local 1264 in Mobile, Alabama, are you not?

A. Yes.

Q. At one time Local 1264 used to represent announcers in Mobile, Alabama, did it not?

A. Yes.

Q. Local 1264—those announcers were not technicians bearing First Class Radio licenses, were they?

A. No.

Q. There was no requirement that a man to be a member of Local 1264 have a First Class Radio license, was there?

A. If he were to operate as a technician that was a prerequisite.

Q. If he were to operate as a technician?

A. That's true.

Q. He had to have a First Class license?

A. That is true.

Q. That was a rule of Local 1264?

[fol. 211] A. Yes.

Q. And, any person who put a record on a turntable was operating as a technician under the rules at that time, was he not?

A. To the best of my memory, yes.

Q. And, that has all been changed, has it not?

A. Yes.

Q. Did any of the advertisers whom you personally contacted tell you they would cease advertising over station WSIM after you contacted them?

A. I don't recollect any of them giving me a positive answer.

Q. Did some of them give you a maybe answer, that they might cease after you contacted them?

A. Most of them generally gave an answer in form that they would take it under consideration.

Q. Do you know whether or not the campaign was successful?

Mr. Goldthwaite: If Your Honor please, that calls for a conclusion. He can tell if he knows what happened, let the Court draw—

The Court: I sustain that.

Mr. Darby: Do you know whether any advertisers ceased advertising over WSIM after you had contacted them?

A. I have no tangible evidence that any of them did because of my activity.

Q. Well, now. I didn't ask you that question. I asked you whether or not that certain of the advertisers contacted did in fact cease advertising over WSIM after you had contacted them?

A. I don't know of any specifically that did; some did. Generally I don't recall any.

Q. But, you do remember discussion it with other people in the union that certain of the advertisers had ceased advertising over WSIM after you had contacted them?

A. I don't recall discussing that with any union members.

Q. Who did you discuss it with, if anyone?

A. No one in particular.

Q. Well, who did you do it with unparticular?

A. No one.

Q. You mean, your testimony is that you didn't discuss that with anyone?

A. No.

Q. Did you discuss with union members whether or not [fol. 212] your campaign against WSIM was effective?

A. I don't remember any discussion as to a campaign against WSIM.

Q. Did you discuss with them your campaign for the radio stations that had contract with 1264 with any of the others about this time?

A. We talked generally within the membership of such things, yes.

Q. Did you announce in the membership who had ceased doing business with WSIM?

A. No.

Q. Didn't discuss that at all?

A. There might have been some discussions but there was no formal discussion of it in the meeting.

Q. Was it your object to cause these advertisers to cease doing business with WSIM?

A. No, sir. It was our object to have them do business with union contract stations and to help us protect the bargaining conditions and working conditions that we had fought for over the years.

Q. With whom did you discuss that object?

A. Well, with the advertisers we contacted, we discussed it among ourselves as a group.

Q. Was it discussed—did you discuss with any of the persons the answer that Local 1264 would file to the amended complaint of the Complainant in this matter?

A. Would you repeat it?

Mr. Darby: Would the Reporter read it?

(The Reporter so does)

Mr. Darby: Well, let me withdraw that and ask you this.

Mr. Goldthwaite: No. Let him answer it. I want him to answer it.

Mr. Darby: Well, I want him to answer it too.

A. Well, exactly what do you mean? Did I talk over the amended complaint that the Local filed?

Q. Did you—was it discussed at any of the union meetings or among the members in your presence, the amended complaint that was filed by the Complainant in this action?

Mr. Goldthwaite: Show it to him and ask him.

Mr. Darby: Did you ever read the amended complaint filed in this action?

A. Yes. I was given a copy of it and read it.

[fol. 213] Q. You read it. And, did you read the answer that was filed?

A. Yes.

Q. Was the answer filed correct insofar as it pertains to you?

A. I could not say without examining the thing again.

Q. Don't you remember now whether or not the answer which the union filed was correct in your mind as a member of the union?

A. The examination I gave the document at the time, it seemed to be.

Q. Seemed to be correct?

A. However, I did not, as I remember, attach my name to it as such.

Q. I am looking for the complaint and the answer in the Court's file. I'm trying to show it to the witness.

The Court: What do you want, the answer to the amended bill?

Mr. Darby: I'd like both the answer and the amended bill, excuse me Judge. I was looking all through the file and couldn't find it.

The Court: This is the pleading up here that we finally settled on.

Mr. Goldthwaite: Your Honor please. I'm going to ask that the witness be shown these documents before he is questioned on them. I think in fairness he ought to be shown the document because he is not a lawyer, he does not know what Mr. Darby is talking about, the amended complaints and such.

The Court: Well, I'll let the witness decide whether he needs to look at it before he answers the questions. If he thinks he is able to answer without looking, I am going to let him do it. Otherwise, I'll let him look at it.

Mr. Darby: Mr. Fridge, I'm handing you the answer to the amended bill of complaint taken from the Court file, and I'm referring you to a page attached thereto that purports to have your name, Dave Fridge signed to it under these words: "Personally appeared before me the undersigned officer authorized by law to administer oath, David Fridge, he, after first being duly sworn, deposes and says that as an individual Respondent he has knowledge of the facts recited in the above and foregoing answer and the same are true,

and those facts alleged on information and belief he verily believes to be true." Is that your signature and is that your affidavit?

A. That is.

[fol. 214] Q. Is that affidavit—before you signed that affidavit, you did make yourself aware of what was contained in that answer which you swore was true, did you not?

A. That's true.

Q. And, was it true at the time you signed it to your best knowledge?

A. It must have been or I wouldn't have signed it.

Q. All right, sir. I'll refer you, if you please, to Paragraph 18 of the Complaint, and ask you whether or not this is correct, the amended complaint in this cause. "Respondent since August 10, 1962, has been picketing, letters addressed to persons, firms and corporations, and by personal contact sought to effect a boycott of Complainant, and to cause persons doing business with or desiring to do business with Complainant to cease doing business with Complainant or to refrain from doing business with Complainant." Is that what that document says, Paragraph 18? Now, I'll ask you to refer to your sworn answer, if you will please, to Paragraph 18 of that complaint, being Paragraph 14 on Page 4 of your Answer and ask you whether or not this is what that says. "Respondent admits the allegations of Paragraph 18." Is that correct?

A. Uh huh.

Q. All right. That's all.

On Re-direct examination.

By Mr. Goldthwaite:

Q. Mr. Fridge—what are the rules of the union about the weekly pay of a technician?

Mr. Darby: Objection to what rules—

The Court: Sustained.

Mr. Goldthwaite: He's been asking about it, Judge, and he objected to me asking these questions on direct, and then he brought out part of the rules of the union, the working

practices on cross examination, I think I am entitled to go on into it and bring it up—

Mr. Darby: If he has got the rules, Your Honor, let him bring them up here and perhaps we won't object.

Mr. Goldthwaite: You asked him—

(Here occurs argument of counsel)

The Court: I sustained your objection.

Mr. Darby: Thank you, excuse me.

Mr. Goldthwaite: I except, if Your Honor please. I think what's sauce for the goose ought to be sauce for the gander. [fol. 215] He asked about—I don't mean to argue, but about the rules of technicians handling the tape records for one in those specific words. In what manner was this station being conducted—let me withdraw that. Mr. Fridge, what schedule was the Engineer at WSIM working after August 1st, 1962, if you observed?

A. I could not say by observation, only by conversation that was held with him when he stopped and talked with us on the picket line. We asked him generally his working hours, and he said that he had to see that the station got on in the morning and then in the evening he did maintenance.

Mr. Darby: I object again. That is not—that was not covered on cross examination at all, Your Honor. We didn't go into who was doing maintenance with this witness or anything else about it.

The Court: Overruled.

Mr. Goldthwaite: Who was this you are talking about?

A. The Engineer, Earl Bryant, I believe is his name. He said generally that he was on duty while the station was on the air.

Q. How many hours is that?

A. It was from 4:00 A. M. until local sunset.

Q. Did he say how many days a week?

A. I assume since he—

Q. No. Did he say how many?

A. He didn't say.

Q. Did he say anything about being on standby?

A. He said he was by himself.

Q. Did he say how many hours a week he worked at the station?

A. No, sir. He didn't. He gave no indication of the number of hours.

Q. Did he say what he was paid?

A. No.

Q. What was the—explain what was the nature of this financial trouble you had with WAIP.

A. General financial trouble of the whole station. The station itself was in financial straits throughout the latter years of its existence and there were times when pay checks were held back with the permission of the technicians and the other employees of the station. And, at the time of the sale, we were promised that we would get the money that was coming to us, and I was given to believe at that time that it would be the full amount that was due me including [fol. 216] severance pay, however, I received a letter stating that my services no longer would be needed by the Corporation, the Corporation tendered no severance pay, and I was told that I would not get it.

Q. You were paid all of your hours for time worked but not paid for your severance pay?

A. Yes.

Mr. Darby: Object to him leading the witness.

The Court: Sustained.

Mr. Darby: Move to strike his answer if he gave one.

The Court: Granted.

Mr. Goldthwaite: He said "yes". Do you remember the conversation you had with Glatzer on August 31st?

A. In substance.

Q. Would you state—who else was present?

A. Mr. John D. Rayburn, he was also a member of the local.

Q. Is that Doug Rayburn that has been sitting here in Court all day?

A. Yes, sir. He's absent now but was here earlier. He is named as a Defendant, I believe.

Q. All right. Who else?

A. Glatzer and myself.

Q. Just the three of you?

A. Just the three of us.

Q. Relate as best you recall what the conversation between you was.

A. We were sitting, that is, Rayburn and I were sitting having coffee and Glatzer came over and wanted to buy us a cup and sat down, spoke in generalities of radio in rather a derogatory manner about the chances of the station under the circumstances with this being a predominantly hillbilly area that they were in trying to push, what he called "good music" down the throats of people who didn't want it. And, it didn't seem like a very practical thing, and the conversation moved on from that to what he termed "fight" that the onwership of the station was in with the union. He mentioned letters that were being mailed out by the union to advertisers and asked Doug and I, Mr. Rayburn and I, if these did not constitute secondary boycott and we realized that it was our understanding that what we were doing was legal. And, he asked what authority and I quoted to him—not quoted to him, but told him that we had conducted similar campaigns at WKRG and that there had been a hearing [fol. 217] involving the National Labor Relations Board as to the legality of our actions which were parallel, and that the National Labor Relations Board had found that our actions were legal and were upheld and I made the comment at that time that later the Landrum Griffith Act upheld that decision of the Board in substance guaranteeing freedom of speech to a union in a situation like this.

Q. Anything else said?

A. Actually that,—after that, as I remember, he mentioned the fact that Earl Bryant had made application and paid initiation fee to a local union and he did not know what union it was. And, I commented I thought that was fine. And, he said, "Well, I would think that you would not like that." And, I said, "Well, it doesn't make any difference to me, that is not the bone of contention." I said, "We are merely trying to protect what we have got and what we have gained through long years of bargaining here in town by protecting the contract we have got."

Q. I think that is all I have, Judge. Was that all the conversation?

A. I think at that point he left. I think he had to pick up his automobile and get back to Fairhope.

Mr. Goldthwaite: Thank you, sir.

Mr. Darby: No additional questions.

The Court: You may step down. We are recessed until 10:00 tomorrow morning. Thank you.

(Whereupon, the Court was recessed for the day and resumed the next morning, April 10th, 1963, after which the following occurred:)

Mr. Goldthwaite: If Your Honor please, we would like to refile at this time the plea in abatement and the amended plea in abatement to the bill of complaint, as amended, April 9th.

The Court: Let me see what we are talking about. Well, now, your plea in abatement is your plead to the jurisdiction?

Mr. Goldthwaite: Yes, sir. Plead to the jurisdiction, I'm sorry I phrased that improperly, it is the plead to the jurisdiction.

The Court: All right. That is what we have been taking testimony on all along.

Mr. Goldthwaite: Yes, sir. Now, I would like to file an answer to the complaint as amended.

The Court: Now, let the record show that by agreement between the parties, all of the evidence that's being heard both on the plea in abatement and the bill will be considered [fol. 218] in each case, and that in filing the answer, they do not waive the right to insist on their plea in abatement which is entitled, "plea to the jurisdiction".

Mr. Goldthwaite: I suppose the record should—the docket should show that we re-file our answer previously filed to the amended complaint and file an additional answer to the amended.

(Off the Record Discussion)

MR. JAMES C. BURNS, a witness for the Defendant, having first been duly and legally sworn, testified as follows:

On Direct examination.

By Mr. Goldthwaite:

Q. What is your name, sir?
A. James C. Burns.
Q. What do you do, Mr. Burns?
A. Assistant Chief Technician, WALA Radio.
Q. You are a radio technician?
A. Yes, sir.
Q. How long have you been a radio technician?
A. About 22 years.
Q. Are you a member of Local 1262 of IBEW?
A. I'm a member of 1264.
Q. I mean, 1264. How long have you been a member?
A. About 21 years.
Q. Twenty-one years. Have you held any offices in Local 1264?
A. Yes, I have.
Q. What are they, what offices have you held?
A. I have held Treasurer, President and Business Agent.
Q. How long were you Business Agent?
A. I was Business Agent, I would have to guess, I would say approximately five years.
Q. When did you cease to be Business Agent?
A. Approximately four years ago.
Q. Was your term as Business Agent the five years prior to that date?
A. No. Yes, yes, it was five years prior to that.
Q. Have you held any office in the Union in the past four years—during the past four years?
A. I believe I was on the Executive Board for two years following my term as Business Agent.
[fol. 219] Q. Are you an officer at the present time?
A. No, I am not.
Q. Were you an officer during August and September of 1962?
A. No.

Q. Did you—are you familiar with the radio station WSIM, Mr. Burns? Do you know there is such a station?

A. Yes.

Q. Are you acquainted with station WAIP?

A. Yes, I am.

Q. Did you ever work for WAIP?

A. No.

Q. Did you have occasion during August of 1962 to have any dealings with station WSIM or its officials?

A. Yes, I did.

Q. Would you tell us what you did, please. First from the beginning.

A. During early August Dave Smith, Business Agent for Local 1264, asked me if I would accompany him on a meeting with the station manager, Mr. John Hale.

Q. Do you remember the day this was?

A. The best I can recall it was August 6th.

Q. Where was the meeting held?

A. Held in WSIM downtown studios, Van Antwerp Building.

Q. Go ahead and tell us what happened.

A. Mr. Smith, according to Mr. Smith, I'll put it that way, had been trying unsuccessfully to get in touch with Mr. Hale. He came by the Union Hall this morning I was there; I happened to run into him accidentally, and he made a call to the new offices of WSIM downtown, and found Mr. —found the telephone busy.

Mr. Darby: I object to what Mr. Smith found.

The Court: Sustained.

Mr. Darby: Move to strike it.

Q. Were you present?

A. Yes, I was.

Mr. Goldthwaite: I ask that it be reinstated, if your Honor please.

The Court: Denied.

Mr. Goldthwaite: What happened,—where did this happen?

A. At the Union Hall.

[fol. 220] Q. At the Union Hall. What did Mr. Smith do?

A. On finding the line busy—

Mr. Darby: Object to what—

Mr. Goldthwaite: No. What did he do? He made a telephone call?

A. He made a telephone call.

Q. All right. And, did he talk to anyone over the line while you were present?

A. No.

Q. After that what did you do?

A. We both proceeded to go to the Van Antwerp Building, the WSIM office.

Q. All right. Go ahead.

A. Upon arriving there, we walked into the front office, Mr. Hale was in the back office on the telephone, evidently talking to a client, we waited until he was through with the conversation; upon entering the front office Dave Smith and I were seated, Dave Smith introduced myself to John Hale. We then mentioned to him the fact that we had been trying to,—that he had been trying to get in touch with him for several days and wondering why that Hale hadn't called him back as he had promised. Hale said that he had been unable to get in touch with his boss, Robinson, in Montgomery, and that was the reason he hadn't called him until this time. Along about that time I began to talk; I asked, told Mr. Hale that we would like to get one point clear before we went any further, that I had understood that the representative, oh—I think it was M. C. Averett and Dave Smith, had told John Hale that Local 1264 felt that the contract, the old WAIP contract was still in effect and that the new ownership should abide by it. I says, as we see it, after discussing it further, we don't feel that is true, and the thing, we were primarily concerned with two things now, we were asking him for, Dave Fridge, the former technician, the technician that worked at WAIP had a large family, he had six children, he was out of work. We wanted to know if they intended to hire him. We felt that he was due at least an answer, whether they intended to hire him or not hire him. Second, we wanted to know if they intended to operate as a union station or

as a non-union station. I pointed out to him that we well understand and we feel that they understand they have a right to operate as a non-union station if they wish to. Mr. Hale repeated more than one time, several times, that I am just the manager, I have nothing to do with it. He [fol. 221] said, "We'll get Mr. Robinson on the phone and we will talk to him." He immediately placed a long distance call to Bob Robinson, and after talking to him very briefly turned the telephone over to myself. Bob Robinson at one time had worked as an announcer at WKAB, he remembered me and I did not remember him. So, after we had passed the time of day, we got into then the things that I had discussed with Mr. Hale.

Q. Where is station WABB?

A. WABB is located here in Mobile. I stated WKAB. Bob Robinson at one time worked at WKAB.

Q. Is that in Mobile?

A. Mobile. Robinson, I can't give this exactly play by play, but, Robinson wanted,—his first question was, "I understand the union requirement in Mobile is two and a half men." He says, "Is that correct?" I told him, I says, "It's not." He said, "What is the requirement in Mobile, as far as the union is concerned?" I said, "Well, there is no certain requirement." I says, "We normally have in a daytime operation similar to the old WAIP set-up, we normally have a one and a half man set-up."

Q. Are there more than one kind of radio station, Mr. Burns?

A. You have a daytime operation and full-time operations. Full time operations are stations than can operate at night.

Q. Now, are there some specialized stations?

A. You would have to re-phrase that, I don't—

Q. Well, do you have,—is there a station called directional antennae station?

A. Yes, sir.

Q. Does FCC have regulations as to the manning of the transmitters?

A. Yes. The FCC requires that a technician, a first class telephone—

Mr. Darby: We object to what the FCC requires on these things.

The Court: Sustained.

Mr. Goldthwaite: If Your Honor please, I believe that the witness being an expert in his field could testify as to what the Federal requirements for manning these stations are in order to correlate those to the alleged demands made by the union on the stations, that was the only purpose—

The Court: In face of the objection, I am going to have to take the position that the regulations themselves would be the best evidence.

[fol. 222] Mr. Goldthwaite: Well, I would like to place the question I asked to the witness again. I think the objection was premature, I didn't ask him what the contents of the regulations were.

The Court: Re-state your question.

Mr. Goldthwaite: Does the FCC have regulations pertaining to the number of men who must man transmitters?

Mr. Darby: I object. The best evidence is their own contents.

Mr. Goldthwaite: I didn't ask him about—

Mr. Darby: I know, you asked them if they have them. If they have them the best evidence,—the regulations are the best evidence that they in fact have them.

The Court: You may answer. Does the FCC have regulations governing the number of men required to man the radio stations?

Mr. Goldthwaite: Transmitters.

A. The FCC doesn't have regulations regarding the number of men.

Q. It does have regulations?

A. It does not. It has regulations—

Mr. Darby: I object. He answered the question; I object to any further voluntary answers.

Mr. Goldthwaite: I don't know whether he has finished answering the question or not, if your Honor please.

The Court: I rule that he has.

Mr. Goldthwaite: Mr. Burns, doesn't the FCC issue some written regulations for the operation of radio stations and radio transmitters?

A. Yes.

Q. And, those regulations are in writing, are they not?

A. Yes.

Q. You didn't mean that they didn't have regulations a minute ago?

A. No. I did not.

Q. Go ahead now. You were talking to Mr. Robinson with reference to the manning of the stations?

A. Yes. I assured him that the union did not require any two and a half men to operate a daytime station. I told him that the contract, former contract with WAIP, called for one and a half men.

Mr. Darby: May it please the Court. I object to the testimony if it is for the purpose of showing what the contract said. But, of course no objection to the limited purpose of showing what this witness said on the telephone. [fol. 223] Mr. Goldthwaite: Go ahead.

A. I told him WAIP had been operating with actually one man, even though the contract required two and a half men,—required one and a half men. I pointed out to him that this was not something that the union wanted in the beginning, the matter of requiring one and a half men; it was something that the management of the radio stations wanted; that under the old contract in prior years, the union required certain jurisdiction of work, and this was more or less a compromise between the union and the stations to settle for one and a half men operations. He says to me, he says, "Well, I wish I had known that before today." He says, "I already have a man on the way down there for a two weeks' period, temporary basis. He has already left for Mobile." He said, "I don't know what to promise you about hiring Fridge." He said, "An old acquaintance of theirs, a fellow by the name of Cliff Shelkowsky, had applied for a job with their firm some time ago that he is a, you might say, top notch engineer who did consulting work, and for this reason they would like to hire him as their over all chief engineer and locate him here in Mobile, and for this reason they could not make any commitment to us on Fridge or anyone else. I then asked him, I said, "Well, Mr. Robinson, do you intend to operate

as a union station or as a non-union station?" He said, "Well, I don't know." He said, "Maybe we can work out something." He asked me if we would be willing to take in technicians that they hired into our local union. I pointed out to him that we would be willing to take the technicians into our union if he wished to join, reminded him of the fact that Alabama is a right to work state, that a man doesn't have to join, that we even have people that come to the union stations that are not in our union. I told him, after asking repeatedly if he intended to operate as union or non-union, he would not commit himself, I told him that we had a meeting, which we did, had a meeting scheduled for the next morning, and told him I would like to have something for this meeting. He says, "Well, what do you people intend to do if we decide to operate as non-union?" I told him that was to be decided yet, we did not know. That we would have to protect the conditions in which we, the prevailing conditions in which we have here in Mobile, and that more than likely some course of action would be taken. So, he said, "Well, I'll put a letter in the mail today which you will get tomorrow morning." I said, "Well, I doubt very seriously if you put a letter in the mail today that we will get it tomorrow morning." He said, "Well, I [fol. 224] assure you, it will be there tomorrow morning." So, that was the end of the conversation with Mr. Robinson.

Q. Now, did you receive a letter from him?

A. No. We did not receive a letter direct through the mail from Mr. Robinson.

Q. Did you—was there a discussion between you and Mr. Robinson as to a one man operation?

A. Beg your pardon?

Q. Was there a discussion between you and Mr. Robinson as to a one man operation?

A. Yes.

Q. What was that?

A. He asked me if the union would be willing to go along with a one man operation.

Q. What did you say?

A. I told him I did not know; I would be glad to take any proposal he had, I would take it back to the members.

Q. Was there any discussion as to the wage rate, Mobile Technician wage rate?

A. I believe he asked me what the prevailing wage was, and if he did, I am sure I told him a hundred and twenty, because it is at all the stations.

Q. And, what is meant by operating under union conditions, Mr. Burns?

Mr. Darby: Now, I object to what is meant by that, Your Honor.

Mr. Goldthwaite: I asked him what he means by it, Your Honor, to explain what he means by it.

The Court: Overruled.

A. Operating under union conditions means to pay the prevailing wage with your vacation and sick leave benefits which we have at the other stations.

Mr. Darby: I object to what they have at the other stations, Your Honor.

Mr. Goldthwaite: I asked you to define, when you told Mr. Robinson,—what you meant when you asked Mr. Robinson if he was going to operate under union conditions.

A. Union conditions would mean to have, as far as I am concerned, to have a contract with our local union.

[fol. 225] Q. During this conversation with Mr. Robinson, was anything said about Mr. Holt?

A. I cannot recall if there was at the present time.

Q. Did he say to whom Shelkowsky had applied for a job?

A. Yes. He did say that Shelkowsky had applied for a job to Holt.

Q. Is that the only meeting at which you attended at WSIM?

A. The only meeting with the manager of WSIM—no, I take it back. I met with Mr. Howard, attorney, one time, Dave Smith and myself and Mr. Howard, the second time, Dave Smith, myself, Mr. Howard and Mr. Lightsey.

Q. And who?

A. Mr. Lightsey, Sam Lightsey.

Q. Who was present at the first meeting?

A. Dave Smith, myself and Mr. Howard.

Q. Attorney for the Company?

A. Yes.

Q. Was there any representative of WSIM present other than Mr. Howard?

A. Not at the first meeting.

Q. What was the other meeting?

A. The second meeting was the meeting with Mr. Lightsey and Howard and Dave Smith and myself.

Q. Did you participate in setting that meeting up?

A. No, I didn't.

Q. When did it occur?

A. I would say within several days after my conversation with Mr. Hale.

Q. You don't remember the exact date?

A. No. I don't.

Q. Tell us what happened in that meeting.

A. I couldn't tell you.

Q. Did you talk to Mr. Lightsey?

A. No. At the first meeting, Mr. Lightsey was not there.

Q. No. Well, I am asking you about the second meeting.

A. Oh, the second meeting. The second meeting was when we entered Mr. Howard's office, he introduced us to Mr. Lightsey, as best I can recall he introduced him as the comptroller of Holt Broadcasting Services. Mr. Lightsey mentioned early in discussion that they would like to talk [fol. 226] to us about—I can't use the language that he used, concerning union contract, negotiating a contract with us. We pointed out to Mr. Lightsey that we were not in a position to negotiate a union contract with him because they had not recognized our local union, and that the employees had not chosen our local union to represent them. He insisted that we go into a discussion, that he and Mr. Howard go into a discussion concerning terms that normally exist at the other stations under union contract. In other words, he wanted to discuss a sample contract. What would be required of them if they decided to become union.

Q. Did you have that discussion?

A. We did not have that discussion until—we told them that we thought this discussion would be illegal, that we

could not do it. Mr. Howard assured us it would be all right. And, I told him we could not do that until we talked to Mr. Adair, our legal counsel. He said, "Well, let's get Mr. Adair on the telephone." So, he contacted Tom Adair in Atlanta, your law firm, and talked to him briefly, and the telephone passed backwards and forwards two and three times between myself and Mr. Howard. Tom told us, Tom Adair told us that he could see nothing wrong if we wanted to go ahead, if the Company wanted to recognize us, he said, in effect they are recognizing you if they want to negotiate a contract. He said, "I see nothing wrong with preliminary discussions if they don't want to recognize you, preliminary discussions on the contract." So, he also advised me that he had just talked to Mr. Holt the night before. That Mr. Holt had called him from Hattiesburg, Mississippi—

Mr. Darby: I object to the conversation as to the truth of the matter, that is, that Mr. Adair had in fact talked to Mr. Holt.

Mr. Goldthwaite: Was—

The Court: Sustained.

Mr. Goldthwaite: Was Mr. Howard listening in on the phone?

A. No.

Q. After the conversation with Mr. Adair, did you tell Mr. Howard and Mr. Lightsey what Mr. Adair had told you on the phone?

A. Well, as I say, the phone was passed back two and three times. Mr. Adair told himself evidently, told Mr. Howard evidently that—

Mr. Darby: I object to what Mr. Adair told Mr. Howard.

The Court: I sustain it.

[fol. 227] A. Mr. Adair told me it would be all right to go ahead with the discussion.

Q. Did you talk to, have a conversation with Mr. Lightsey and Mr. Howard concerning Mr. Holt having called Mr. Adair by telephone?

A. One more time, please.

Q. Did you have a conversation with Mr. Lightsey and Mr. Howard about Mr. Holt's telephone call to Mr. Adair?

A. I can't recall that I did.

Q. All right. Now, when you first went to this meeting, Mr. Burns, did you have a discussion with Mr. Lightsey about the Holt Broadcasting Service?

A. Mr. Lightsey, yes; we talked briefly. He named the stations that were within the Holt chain.

Q. What did he say in that connection?

A. Well, of course, I was asking him his position before I actually—

Q. What did you ask him?

A. I asked him—I can't recall exactly what I asked him.

Q. What was the substance of what you asked him?

A. The substance of what I asked him, I was interested naturally in who he was and who he was representing, and if he had the authority to negotiate such a contract, and he assured me that he did, that he was representing the Company.

Q. What did he say?

A. And, he named the stations that he was comptroller, and he named the stations, the various stations and the various towns that they had stations in.

Q. What are they, the ones he named, what did he name?

A. The best I can recall there was one in Hattiesburg, one in McComb, one in Montgomery and WSIM in Mobile.

Q. Do you remember the call letters, station call letters that he used.

A. No, I don't.

Q. All right. Now, after this call to Mr. Adair, would you please relate what occurred in the meeting, the conversation between—what you said and what Mr. Lightsey and Mr. Howard said?

A. Well, thereafter, we turned to one of the contracts that this local union has, one of the old contracts, I believe it was the WAIP agreement and we went through it section by section.

[fol. 228] Q. Did you have discussions about these sections?

A. Yes, we did.

Q. Would you recite some of the conversations you had about—

A. Well, basically, Mr. Lightsey would comment, "Well, this is—"

Q. Tell us what the specific sections are, Mr. Burns, and what were the discussions that were had about them.

A. Well, it's about fifty different sections in one of our contracts, Article One, basically jurisdiction, he found no fault with Article One.

Q. What does that mean?

A. That is the work that would be covered by technician working under a standard IBEW contract.

Q. What work is that, that you were discussing, I am talking about your discussion with them. What were you and Mr. Lightsey discussing?

Mr. Darby: May it please the Court, in order for the Court or anyone else to understand their testimony if he's talking about something they had written before him, we need what was in writing before him or we don't know what they were talking about. He's going to give some hearsay testimony about what they were talking about and then try to say, "this is what they said about this hearsay testimony" and we have to find out actually what it was they were talking about before we are going to be able to understand the testimony. Those things are very complicated, I haven't seen a much more complicated labor agreement, I have negotiated two or three of them myself and I know what's in them. Every word makes a difference, and frequently a comma makes a difference.

The Court: I can't recall the exact question that was asked. Do you remember the question was asked?

Mr. Goldthwaite: I was trying to get Mr. Burns to tell me what they said. Now, I am not asking him about—

The Court: You can describe what they said. Overruled.

Mr. Goldthwaite: If these conversations relate to specific contract terms, I want to know what you said about them.

The Court: You can describe or you can state what was said, you can't draw any conclusions, what was agreed or anything else. You are limited to stating to the best

of your recollection what you said and what he said, and if you are unable to do that then you should not try to go further.

[fol. 229] A. We discussed the agreement section by section. Mr. Lightsey, as we would read each section, he would say to us, "Well, that is more or less standard, as you would find in other IBEW agreements." That was true through the entire agreement, in fact, when we concluded our discussion, he told us that he seen nothing really different about this agreement than others that he had seen. Then he come back,—we come back to the issue of Dave Fridge, and I don't know whether we discussed the one and a half or one man operation or not. The best I can recall, I come back to that and he wanted to know if we could give him something definite on that that they would not have to hire Fridge or not. I told them that I would take anything they offer, we would take it to the membership. We had a very, we thought at that time, a very successful meeting.

Mr. Darby: I object to what he thought about it and move to strike it.

The Court: Sustained.

Mr. Goldthwaite: Anything else happen at the meeting?

A. The best I can recall now, that was it.

Q. Now, did you have a conversation after that with Mr. Hale?

A. I cannot recall having another conversation with Mr. Hale, no.

Q. Did you—Mr. Burns, at any time did you have a conversation with Mr. Hale concerning—

Mr. Darby: I object to you leading the witness before you do it.

Mr. Goldthwaite: I am not—

Mr. Darby: The man says he doesn't recall it.

Mr. Goldthwaite: I said later. Did you have a conversation concerning Mr. Holt's ownership in radio stations?

A. Yes.

Q. Where was that meeting? Where was that conversation?

A. We discussed it—I can only recall meeting with Mr. Hale one time, and I know that he told me that the chain of Holt stations, that there were three people that actually owned them, Mr. Holt, his wife and Mr. Robinson all had interest in them.

Q. What did he say about,—did he say how many stations those three people owned?

A. Four stations.

Q. Four stations.

A. I would not be positive of that.

[fol. 230] Q. Sir?

A. I would not be positive of that. But, it seems, I am almost certain that he said the chain of stations were owned by these three people.

Q. Did he say in what proportions the stations were owned, the various stations?

A. No. I don't think we discussed that.

Mr. Goldthwaite: I think that is all.

On cross examination.

By Mr. Darby:

Q. Mr. Burns, are you in charge of the entire radio operations at station WALA?

A. No.

Q. Aren't you Assistant Chief Engineer in charge of radio at WALA?

A. Yes.

Q. Do you schedule other employees to work at WALA, fix the schedules for the other employees?

A. Yes. After consulting with the Chief Engineer, yes.

Q. You can give them time off, can you not?

A. After consulting with the Chief Engineer.

Q. You give them time off without consulting him very frequently, don't you?

A. No.

Q. Do you always consult him before you let them off for the day?

A. There is only one man.
Q. Only one man. Who is he?
A. Drew Rutherford.
Q. Drew Rutherford. Spell that.
A. Drew Rutherford. R U T H E R F O R D.
Q. Now, as a matter of fact, you have two and a half men in radio at WALA; don't you?
A. No.
Q. You do not. How long has it been since you had only two men in radio at WALA?
A. Three or four years.
Q. You have a written contract with WALA, don't you, for radio?
A. Yes, sir.
[fol. 231] Q. Without asking you what the terms of the contract are, are you abiding at WALA by the contract that you have with them for radio with respect to the number of men employed in radio?
A. Yes.
Q. As Chief Engineer, how much do you receive over what the regular engineer receives, if you know?

Mr. Goldthwaite: Object to the question. It is misleading, there is no testimony this man has—
Mr. Darby: As Assistant Chief Engineer, how much do you receive over the regular engineer?

A. Twenty-five dollars.
Q. Is that a week?
A. Yes.

The Court: Did you say, "yes"?

A. Yes.
Q. From time to time at WALA, you have deviated from the contract terms, have you not?
A. No more so than the other stations.
Q. You deviate at all stations, is that correct? Sometimes?
A. Yes. I am sure it is.
Q. Sometimes—excuse me, go ahead.
A. I am sure, as you say, down to that comma we have, we are not hardfast.

Q. Now, at WALA, you took a ten per cent reduction for a substantial period of time, did you not?

A. No.

Q. Due to the financial difficulties of that station?

A. No.

Q. Is it your testimony that the engineers at no time took a ten per cent reduction of what was called for in your contract?

A. Some of the technicians did on their own.

Q. All right. Some of the technicians did on their own. You did it too, didn't you?

A. No, I did not.

Q. You did not? Approximately what percentage did the technicians, what percentage of the technicians at WALA took a ten per cent reduction under what was called for in that contract?

A. Approximately, I will have to guess, approximately a third.

[fol. 232] Q. When did that occur?

A. Approximately a year ago.

Q. And, when did it stop?

A. I think it lasted six months. I can't testify to that, because I don't know.

Q. Did you hear any protests, go to Arbitration about the reduction being paid under what the contract called for?

A. No, we did not.

Q. Now, I think you testified on direct that they only had a one man operation at WAIP, is that correct?

A. I don't know. As far as I know they had one man.

Q. They had only one man for a substantial period of time prior to the time that WAIP sold out, is that correct?

A. As far as I know.

Q. And, who was that one man?

A. Dave Fridge.

Q. Now, at that time, was that, without inquiring as to what the contract said, was that more or less than provided in the contract, if you know?

A. That was less.

Q. Now, that one man they had, did he draw a Chief Engineer's pay, or did he draw an engineer's pay, if you know?

A. I can only tell you what he told me.

Q. You don't know what he drew?

A. No.

Q. Well, what did he draw insofar as you know?

A. A hundred and twenty dollars a week.

Q. How much was a Chief Engineer—was a Chief Engineer paid substantially more than that according to the contract?

A. Twenty-five dollars more.

Q. Did anyone draw a Chief Engineer's pay there, if you know?

A. I don't know.

Q. So far as you know, as a member of the union, as I understand your testimony, there was only one engineer employed at WAPP?

A. As far as I know.

Q. And, it was your job as a member of the union to know, was it not?

A. No.

[fol. 233] Q. Was not? Now, I believe you testified you had two meetings with Mr. Howard, is that correct?

A. Yes.

Q. This is Mr. Howard over here, the attorney.

A. Yes.

Q. I believe you testified you didn't recall what happened at one meeting, is that right?

A. Yes, that is right.

The Court: Speak a little louder please, she can't hear you down there.

Mr. Darby: Do you recall where this meeting was that you can't recall what happened?

A. Yes.

Q. Where was it?

A. At his office.

Q. Who was present besides yourself?

A. Dave Smith and myself.

Q. All right. But, you do recall what happened at the second meeting?

A. Yes.

Q. Do you have any—could you give us any reason if you have any, why you recall the second meeting as you testified to today but you don't recall anything about the first one?

A. There was considerable more discussion.

Q. At which?

A. The second meeting.

Q. You don't recall the lesser discussion at the first meeting?

A. No, I don't.

Q. Now, did you not the first time you met with Mr. Hale, meet with Mr. Hale at the station out in Prichard?

A. No.

Q. Did you ever go to the station in Prichard?

A. Yes.

Q. Did you go to the station in Prichard after WAIP ceased operation?

A. Yes.

Q. When did you go to the station in Prichard?

A. I can't recall, it was either the day or the day before that we went to Mr. Hale's office.

[fol. 234] Q. Did you talk with anybody out there on that day?

A. No.

Q. Were you out there picketing on that occasion?

A. No.

Q. You didn't talk to anybody in connection with the station?

A. No. I would like to correct that. Would you mind asking the question again?

Mr. Darby: Could the Reporter read the last question?

(The Reporter so does.)

A. Yes. We talked to someone in connection with the station.

Q. To whom did you talk?

A. To one of the girls in the office.

Q. Did you go into the office?

A. Yes, sir.

Q. What was the conversation with the girl in the office?

A. We asked her if she could tell us where we could locate Mr. Hale.

Q. What did she say to you?

A. She told us he was out and would be calling her back about noon.

Q. Did you find Mr. Hale that day?

A. I can't recall whether we found him that day or the next day.

Q. When you went out there to the office, was there any picketing in progress?

A. No.

Q. Had it started at that time?

A. No.

Q. Now, how many times did you have a conversation with Mr. Hale, either by himself or with other people?

A. I cannot recall meeting with Mr. Hale at any time except these two meetings, but I may have.

Q. One meeting was in Mr. Howard's office?

A. Yes. No, I didn't meet Mr. Hale at his office.

Q. Where did you meet Mr. Hale the two times?

A. I beg your pardon. I only met with Mr. Hale one time.

Q. And, where was that?

A. In his office, the best I can recall I met him one time, one so-called formal meeting one time.

[fol. 235] Q. How many times did you talk with him in his office whether it was formal or informal?

A. Only in his office one time.

Q. So, any conversation you had with Mr. Hale would be the one time you were in his office when you talked with Mr. Robinson on the telephone?

A. Unless I had talked to him on the picket line or on the street.

Q. Well, did you talk to him on the picket line or on the street?

A. Not that I can recall.

Q. Did you talk to anybody on the picket line other than the pickets?

A. Yes. I met Mr. Howard one day on the picket line. A former salesman, Mr. Johnson, talked to the former announcer that they had let go, and the other people they dismissed when they took over.

Q. Now, the one time—at one time the IBEW 1264 also represented announcers, did it not?

A. Yes.

Q. There are technicians other than first class rating technicians, that is technicians having a first class license?

A. Other technicians than first class?

Q. Yes. There are first, second and third class, are there not?

A. Oh, yes.

Q. What position, if any, do you hold with Respondent, No. 1264 at the present time?

A. Just a member.

Q. Does Mr. Smith occasionally call on you to help him go around and talk to respective companies that you want to put under contract?

A. Unless it would be the meeting with WSIM, that is the only one.

Q. Mr. Smith did ask you to do that?

A. Yes.

Q. He was the Business Manager at that time?

A. Yes.

The Court: We are not able to hear you, please raise your voice.

A. Yes.

Q. While you were there you did most of the talking, is that correct?

A. I can't say; no, most of the talking, I think it was about equal.

[fol. 236] Q. You did all the talking to Mr. Robinson, didn't you?

A. Yes.

Q. The business manager didn't talk to Mr. Robinson?

A. No.

Q. The talking that was done, you have already testified as to what you said and what the other people said and what Mr. Smith said, is that correct?

A. As far as I recall.

Q. All right. Mr. Robinson told you, did he not, that he would have to get in touch with his lawyer when you were talking to him on the telephone, is that correct?

A. Yes.

Q. You had been confused yourself on the legal problem involved, had you not?

A. No.

Q. You had not been confused?

A. No.

Q. You were convinced all the time that the local did not have any contract with WSIM?

A. As far as I was concerned, yes, I knew that.

Q. Did you have a discussion with Mr. Smith over here about whether or not the Local had a contract with WSIM?

A. Yes.

Q. And, after your discussion, did Mr. Smith agree with you rather than the article that we have heard talk about here?

A. Mr. Smith, I don't see how I can testify to what he thought.

Q. Did he say that he agreed?

A. No, he did not.

Q. When you were talking, let me re—you told the representative of WSIM that in your opinion there was no contract, is that right?

A. That's right.

Q. But you weren't expressing the opinion of Local 1264, is that correct? Was that your personal opinion, or was it 1264—

A. As a representative of the union, yes; I went with him.

Q. But in other words, you were speaking for the union—

Mr. Goldthwaite: If Your Honor please, I want to object to this line of questioning, because Mr. Darby is confusing two meetings in his questions. One which incurred before the meeting which Mr. Burns attended on August 1st and Mr. Burns meeting on August 6th, and there is no testimony [fol. 237] in the record that there was a contention by the union on August 6th that a contract was in effect with WSIM.

The Court: Overruled.

Mr. Darby: Well, had you discussed with Mr. Smith that it was going to be the Union's position that there was no contract before you went and started talking—

A. Yes.

Q. You did talk, discuss that with Mr. Smith?

A. Re-phrase that.

Q. Did you discuss with Mr. Smith before you had this conversation with Mr. Howard and Mr. Lightsey, where you testified about you saying there was no contract, did you discuss with Mr. Smith prior to that time that it would be the Union's position that there was no contract?

A. We discussed it.

Q. Did he agree with you that it would be the Union's position?

A. He—yes,—he didn't agree with me, he went along; yes, he agreed.

Q. He agreed. Did the whole union go along so far as you know, that there was no contract? Was that the official position of the union?

A. I can't recall. The minutes would show that.

Q. All right. Was that discussed in the meeting, whether or not there was a contract with WSIM?

A. I can't recall.

Q. Now, Dave Fridge was discussed in this meeting with Mr. Howard, was he not?

A. The second meeting, yes.

Q. Was he discussed at the first, the one you don't remember anything about?

A. I don't recall.

Q. You don't recall. All right, sir. At the second meeting it was the union's position that Mr. Fridge would have to be employed by the station, was it not?

A. No.

Q. It was not?

A. That the union would have,—that the station would have to employ Fridge?

Q. Yes.

A. No.

Q. That was not the Union's position?

[fol. 238] A. No.

Q. Well, was that position arrived at at a meeting of the union, or did you and Mr. Smith arrive at it?

A. I can't recall.

Q. Now, you have been advised by your attorneys, have you not, that it would be against the law for Local 1264 to picket a radio station for the purpose of organizing its employees, have you not?

A. No.

Q. You haven't been told by your attorneys?

A. No.

Q. Was it your desire to organize employees of WSIM when you picketed them?

A. Yes, we would like to see them under contract.

Q. That was one of the reasons you picketed them, is that correct?

A. You might say, that was not the object, the end result, yes.

Q. That was what you hoped to accomplish?

A. We hoped to preserve the decent jobs we have—

Q. And, that means, as you testified before, that they sign a contract with you, is that correct?

A. That means what?

Q. That they would sign a contract with you.

A. You will have to re-phrase the whole thing, I didn't—

Q. Now, isn't it true that in order to preserve the other conditions you wanted a collective bargaining agreement between 1264 and the station?

A. Yes, we would like to get one.

Q. And, that was the purpose of the picketing and the other activities?

A. No, sir.

Q. Then what was it? What was the purpose then?

A. The same thing we did at WKRG.

Q. Run them out of business?

A. No, we did not run KRG out of business.

Q. Now, the purpose was the same as you did at WKRG. You did hope to cause people who were doing business with station WSIM to cease doing business with them, did you not?

A. Yes, sure.

Q. That is why you went to see them?

A. We went to see them to get them to place their busi-
[fol. 239] ness at union stations.

Q. And, in the same time to not do any further business with WSIM?

A. Right, right.

Q. That was part of it?

A. Part of it.

Q. That is why you wrote them the letter, isn't it?

A. Yes.

Q. May I see Complainaint's Exhibit 1 for identification, please.

(The Exhibit is handed to Mr. Darby.)

Mr. Darby: I show you this letter that has been marked Plaintiff's Exhibit 1 for identification, are you acquainted with that letter?

A. I have seen it.

Q. Was it discussed at a union meeting?

A. I am pretty sure it was, almost positive it was.

Q. The purpose of this letter was the same as the other letters in activities that you discussed, was it not?

A. The purpose of that letter is obvious.

Q. No, sir. I am asking you—

A. The purpose of that letter is to preserve the decent wages, conditions, the union stations, the ones that are named there.

Q. And, that is also,—that is the same thing you did when you went around and talked to these other stations, you tried to get them to place their business with the union stations and at the same time deprive the non-union stations of their business, is that correct?

A. Right.

Q. And, that is the same purpose of this letter, isn't it?

A. Right.

Q. And, that was discussed at the union meeting?

A. Yes. I presume it was discussed, I am not sure.

Q. All right, sir. And, that letter was mailed, was it not, on March 25th, at 7:30 P.M., 1963, is that correct?

A. Yes, sir. That is the postmark.

Q. These letters were mailed, were they not, to all the advertisers to whom they are addressed in this area, to all advertisers of Mobile-Prichard area?

A. As near as we could—

Mr. Darby: May it please the Court, I would like to ask for a recess so we could prepare a contempt petition, [fol. 240] the witness has testified in a responsible position, that during the time that this Court had an injunction issued against this very thing that they for the sole purpose and the very purpose for which this Court enjoined them, have gone out and issued this letter while this injunction was pending. The laws of the State of Alabama as annunciated in the National Association for the Advancement of Colored People case, we are entitled to have the contempt proceedings determined before this proceeding is determined. Whether or not,—this Court has issued its injunction, its made its determination, and this is not the proper way to make a determination. They have flagrantly violated this Court's injunction and this witness has testified that they did it for the specific purpose which this Court enjoined them from participating in, and they may have done it in a—

Mr. Goldthwaite: I advised these boys to send that letter out. That was done after the hearing in the case of—

Mr. Darby: I object to counsel testifying.

Mr. Goldthwaite: I'm just telling him. In this other case before Judge McCall last month. I would like to have the witness on voir dire to find out if he knows to which advertisers that went out, this station or the Jemison and Conwell station, the other radio station before Your Honor rules on Mr. Darby's impassionate motion.

The Court: Go ahead and examine the witness.

Mr. Goldthwaite: Mr. Burns, do you know to whom,—in what connection this letter was mailed out to advertisers in the Mobile area?

A. No, I don't.

Q. Did you have anything to do with sending that letter out?

A. No, I didn't.

Q. Did you—were you present in my hotel room after the trial in Jemcon Broadcasting Company case when sending out a letter to advertisers was discussed?

A. No, I was not.

Q. You were not present?

A. No.

Q. Do you know to whose advertisers this letter was mailed out, to what advertisers this letter was mailed?

A. No, I do not.

Q. Do you know whether or not it was mailed to any advertisers of radio station WSIM?

A. No. I do not.

[fol. 241] Q. Until it is shown, if Your Honor please, that it was mailed to the advertisers on this station for the purpose of violating the injunction of this Court, I don't think ther is an occasion to grant any recesses or continuances to prepare contempt citations.

Mr. Darby: May it please the Court, the letter speaks for itself. If the Court would like proof, offer proof, that it was sent to advertisers who advertised only over the Complainant here—

The Court: Well, let's go on. The court looks into this, the Court doesn't need any help on the question of contempt. If I find that Local 1264 has violated my injunction, I will certainly deal with them.

On Further examination.

By Mr. Darby:

Q. Mr. Burns, in connection with the making of your affidavit in this case, would you describe to us how you gave it? The one that was filed originally. Do you recall giving an affidavit?

A. Yes.

Q. Who was present when you gave it?

A. There was other people in the room, but I can't recall. Mr. Stanford took down the affidavit.

Q. Mr. Stanford took it down? Was Mr. Fridge present with you?

A. I can't recall.

Q. Well, do you recall if Mr. Fridge may have been present?

A. He could have been.

Q. Were you present when Mr. Fridge gave his affidavit?

A. No. I can't recall.

Q. Were you present when anyone else gave an affidavit to Mr. Stanford?

A. No. I don't recall being in the room at any time.

Q. You were only in the room when you gave yours?

A. Yes. As far as I know.

Q. But, you don't recall who else was there with you when you gave yours?

A. No, I don't.

Q. Did you dictate what you thought was relative when you gave your affidavit, or was it taken in some other manner?

A. Mr. Stanford asked me to tell him exactly what happened, I began to talk.

Q. Did he take down what you told him occurred?

A. Yes.

[fol. 242] Q. Was that put in the affidavit?

A. Yes.

Q. Your memory was better at that time than it is now? As to what occurred.

A. I am sure it was.

Q. Have you refreshed your recollection with your affidavit within the last week or so?

A. Yes.

Q. When did you last refresh your recollection?

A. I have a copy in my pocket.

Q. You have a copy in your pocket?

A. Yes.

Q. Is it because there was nothing said in the affidavit about the first meeting with Mr. Howard that you don't recall anything about it?

A. There wasn't but very little said.

Q. Very little said. You do recall though at that first meeting that you wanted Mr. Fridge hired then, didn't you?

A. No, I don't.

Q. You do not recall that?

A. Uh-huh.

Q. You don't recall anything about the first meeting?

A. We did not that.

Q. Well, now, the only thing you recall about the first meeting then is that you didn't want WSIM to hire Mr. Fridge?

A. I can't say that that was discussed at the first meeting.

Q. You can't say—well, you are not prepared to say then that you didn't request that he be employed, are you?

A. Yes, I am. Because, I knew from the beginning it was wrong.

Q. You knew that it was wrong?

A. I knew from the beginning that we could not make that demand at WSIM. I personally knew that.

Q. You knew that you couldn't properly make it, is that correct?

A. It—I knew it was legally wrong.

Q. You don't know whether or not somebody else made it when you were not present though, do you?

A. No, I don't.

Q. Now, did you at any time contend in any of these conversations that you had with the representative of [fol. 243] station WSIM that Local Union 1264 represented any of their employees?

A. No. I don't remember making a statement like that.

Q. As a matter of fact, you knew that Local 1264 did not represent any employees of station WSIM, did you not?

A. Yes.

Q. Now, at the second meeting, didn't you state with respect to Fridge that WSIM might not have to take him?

A. No.

Mr. Howard: Your Honor, that is in the record—

Mr. Darby: Uh—what did you say with respect to whether or not WSIM would have to take Mr. Fridge?

A. I told them that any proposals that they had, that we would be glad to take it back to the membership of the local union.

Q. Any proposal with respect to Mr. Fridge?

A. Fridge or anything at all.

Q. Now, you did take it back to the local union the next day, didn't you?

A. I can't recall.

Q. Now don't you—do you want to look at your affidavit again?

A. No.

The Court: Are you able to hear him, Mrs. Sumlin?

A. Excuse me.

The Reporter: It is quite a strain. If you could just speak up just a little, please.

A. I'm sorry.

Mr. Darby: Do you recall what occurred in the union meeting, the first union meeting that occurred after you had met in Mr. Howard's office on the occasion that you remember?

A. No, I don't.

Q. It was very shortly thereafter that the union voted to put up a picket line around WSIM, was it not?

A. Yes.

Q. And at that time you wanted them to hire Mr. Fridge, didn't you?

A. Yes.

Q. One of the purposes of the union is to get its members jobs, is it not?

A. Protect its members jobs.

[fol. 244] Q. Protect their jobs. And, to get jobs for them when they don't have one, is that not true?

A. Yes. That's an object of the union.

Q. That's an object of this Respondent, is it not?

A. Yes; sure.

The Court: Mr. Haughton, can you find me a copy of the actual injunction issued in this case?

(Off the record discussion.)

Mr. Darby: Do you attend all meetings of Local 1264?

A. Yes. I attend as many as I can.

Q. Was it discussed at a union meeting about sending out this exhibit that has been marked as Plaintiff's Exhibit No. 1?

A. No, sir.

The Court: Is that in evidence?

OFFER IN EVIDENCE

Mr. Darby: No, sir. But, I am going to offer it. I offer Plaintiff's Exhibit 1 in evidence.

The Court: All right, sir.

COMPLAINANT'S EXHIBIT 1

TO ALL ADVERTISERS IN THE MOBILE-PRICHARD AREA:

You can help promote prosperity in our area by placing your advertising on broadcast stations which uphold fair employment conditions.

WABB
WALA
WALA-TV
WMOZ
WTUF

They pay us more money so that we have more to spend with YOU.

Radio Technicians Local 1264

International Brotherhood of Electrical Workers
AFL-CIO & CLC

Endorsed by: Mobile Central Trades Council

SEAL

AN ENVELOPE ATTACHED AS A PART OF THE EXHIBIT HERETO

RADIO BROADCAST TECHNICIANS
LOCAL UNION NO. 1264
INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS AFL-CIO
[fol. 245]
1315 Fulton Road
MOBILE, ALABAMA

(postmarked) (STAMP)
Mobile
Mar 25
7:30 PM
1963
ALA.

Hamm's TV & Appliance Co.
2055 Government Street
Mobile, Alabama

(IBEW Seal)

Mr. Darby: Mr. Burns, did you attend a meeting of the local union wherein it was discussed as to sending out this Complainant's Exhibit 1 to all advertizers of the Mobile-Prichard area?

A. I'm almost certain I was. I would not say for sure. I've missed recent meetings. I don't know.

Mr. Goldthwaite: The minutes of the meeting would be the highest and best evidence, and we will produce the minutes of that meeting so you can find out what you did.

Mr. Darby: May it please the Court, minutes don't often speak the truth of what occurred in a particular meeting; they are not the highest and best evidence, some of them. You don't know whether you were at the meeting in which this letter was discussed or not?

A. No, I don't.

Q. Well, I'll ask you, do you recognize the seal of the letter?

A. Yes.

Q. Is that the seal of Local 1264, the Respondent here?

A. It appears to be.

Q. In whose custody is that seal in, if you know?

A. It stays in the union hall.

Q. You recognize this as a communication of 1264?

A. Yes.

Q. Then, you know it has been discussed among the members thereof before it was sent out and afterwards, is that correct?

A. I don't know.

Q. Well, you knew it had been sent out before I showed it to you today, did you not?

A. I had nothing to do with it.

Q. No, sir.

A. I seen it laying on the union table, I knew that they were mailing them out. I had nothing to do with it.

[fol. 246] Q. You didn't personally mail them out.

A. No.

Q. Who were "they" that you knew were mailing them out?

A. Dave Smith, I presume, I had very little to do with it.

Q. I'm not asking you what you had to do with it; I am asking you who you knew it was that mailed them out?

A. I can't say that I know who mailed them out.

Q. Other than Dave Smith?

A. No. I can't say that.

Q. But, you saw them in the Hall?

A. Yes.

Q. In whose possession did you see them at the Hall?

A. Laying on the table.

Q. Who was at the table?

A. Nobody.

Q. You were there, weren't you?

A. Yes.

Q. And, you saw them?

A. Yes.

Q. What, if anything, did you do to see that they didn't go out?

A. I didn't do anything.

Q. Do you know to whom they were mailed?

A. No, I do not.

Q. So far as you know they were mailed to the persons to who they are addressed to, namely, to all merchants of the Mobile-Prichard area, is that correct?

A. That is correct.

Q. Who has custody of the contracts of Local 1264?

A. I don't know.

Q. Do you?

A. No.

Q. Would it be Mr. Dave Smith?

A. Should.

Q. Did you call on any of these advertizers, yourself, Mr. Burns?

A. WSIM advertizers?

Q. Yes.

A. No.

Q. Did you call on any advertizers without regard to [fol. 247] whose they were since August 1, 1962?

A. No, I do not recall.

Q. You have not?

A. Not that I can recall.

Q. It is your testimony that you did not call on any advertizers that advertized over station WSIM?

A. Not to my knowledge.

Q. Have you—you have called on advertizers in any dispute since August 1, 1962?

A. Not that I recall.

Mr. Goldthwaithe: Mr. Burns, who—are you through?

Mr. Darby: I don't know whether I have or not.

Mr. Goldthwaite: Excuse me.

Mr. Darby: Mr. Burns, do you recall whether you called on the Merchants National Bank with respect to WSIM?

A. No, I did not.

Q. All right. Now, you also are engaged in business on your own account, are you not?

A. Yes.

Q. In the electronic business?

A. Yes.

Q. Do you have a contract with the union?

A. No.

Mr. Darby: That's all.

On redirect examination.

By Mr. Goldthwaite:

Q. What is the business you are engaged in on your own account, Mr. Burns?

A. Background Music Service.

Q. Who is in business with you?

A. Ted Bellon and myself.

Q. Just two of you?
A. Yes.
Q. Do you have any employees?
A. No.
Q. Who has custody of the minutes of the meetings of Local 1264?
A. Cliff Sizemore.
Q. Beg your pardon?
A. Cliff Sizemore, the recording secretary.
[fol. 248] Q. Dave Smith have custody of them?

Mr. Darby: Objection, calls for a conclusion.
The Court: Overruled.

A. Mr. Smith does not have custody of the minutes, no.

Mr. Goldthwaite: I think that is all.
The Court: You may step down.
Mr. Goldthwaite: If Your Honor please, I would like to point out that this Plaintiff's Exhibit 1 which hasn't been introduced in evidence—
The Court: It was introduced just a little while ago.
Mr. Darby: Yes, sir.
Mr. Goldthwaite: Was introduced?
Mr. Darby: Yes, sir.
Mr. Goldthwaite: Two was introduced without objection yesterday, but I'm afraid that went by me, the introduction of one.
The Court: All right. I'm going to give you an opportunity to object to it, then.
Mr. Goldthwaite: I would like to move that it be excluded in that it hasn't been shown that that was sent out in connection with this case, was addressed in any manner to advertizers of radio station WSIM or intended to be such, and secondly that the letter does not violate the terms of the Court's injunction in that it does not seek to do any of the things enjoined by the Court, but rather is an affirmative plea to advertizers to do business with union stations and is not a negative plea to try to get advertizers to stop doing business particularly with any station, and which is an entirely legitimate protection of interest in any event, and thirdly even if it could be said, under an adverse

construction, that prima facie violated the Court's injunction, construing a Court's injunction as it must always be construed narrowly, it can be construed to cover only acts that are specifically prohibited, and the injunction this construed cannot be construed to cover this affirmative plea to advertizers to advertize with union stations. For that reason on its face, the injunction properly construed, this letter would not be a violation of the injunction, and therefore, would be irrelevant and immaterial for any purpose in this cause, and I move that it be excluded.

The Court: Motion denied.

Mr. Goldthwaite: Could we get an exception to that, please?

The Court: Yes, sir. I am aware that there were a number of things going on at the time this was introduced and [fol. 249] it was quite possible you were reading the injunction itself and did not—

Mr. Goldthwaite: I think I was talking to Mr. Smith about the list of persons to whom the letter was mailed, Your Honor.

The Court: Well, I am granting you your objection and your exception on it as if it were made at the proper time.

Mr. Goldthwaite: Thank you.

Mr. H. D. Smith, a witness for the Defendant, having first been duly and legally sworn, testified as follows:

On direct examination:

By Mr. Goldthwaite:

Q. Will you state your name, please sir?
A. H. D. Smith.
Q. Are you a member of Local 1264 Mr. Smith?
A. Right.
Q. Do you have an office in the union?
A. I'm the Business Agent.
Q. How long have you been Business Agent?
A. It will be two years this coming June.
Q. Prior to that, did you have any other office in the union?

A. I can't recall.

Q. At any time have you held another office in the union?

A. I can't recall that. I don't think so.

Q. How long have you been a member of this union?

A. I went to work at WALA in 1953, and about six months after I went to work I was allowed to join the union, and that is how long it has been, about nine and a half years, I would say.

Q. What do you do at WALA?

A. I'm a technician.

Q. How long have you been a technician?

A. Nine and a half years.

Q. Nine and a half years. Have you just been served with a subpoena in this case, Mr. Smith?

A. I have.

Q. Is this the subpoena with which you were served?

A. Yes, sir.

Q. Now, do you have in your possession the minutes of the meetings of Local 1264 during the period beginning June 1st, 1962, up and including all minutes through April, 1963?

A. No.

[fol. 250] Q. Who has them?

A. The recording secretary.

Q. Who is he?

A. Clifford B. Sizemore.

Q. Cliff Sizemore. Does he regularly have custody of those records?

A. Yes, sir.

Q. Do you have custody of those in any respect as Business Agent of the Local?

Mr. Darby: Object, that calls for a legal conclusion, Your Honor.

The Court: Overruled.

A. I don't have.

Q. All right. Mr. Smith, I show you a letter that has been marked in evidence, introduced in evidence as Complainant's Exhibit 1, what is this letter?

Mr. Darby: I object to what it is, it speaks for itself, Your Honor, what it is.

The Court: Overruled.

A. We felt that—

Mr. Darby: I object to what the witness felt.

Mr. Goldthwaite: Is that a letter the Local sent out?

A. Yes, it is.

Q. When was it sent out?

A. It was sent out, I guess, two or three weeks ago. I can't recall the exact date.

Q. To what advertisers was it sent?

A. We picked advertizers at random, we got them out of the newspapers when they had Downtown Mobile sales and so forth, everyday there was a list of advertizers in the paper and we had excess to the television log, WALA television; we checked those from memory, we had other advertizers we had called on through the years to support union standards.

Q. Now, did you go through the WALA logs?

A. Occasionally.

Q. Do you have a contract, collective bargain agreement with WALA?

A. I do.

Q. Did you go through the log in getting up the list of [fol. 251] advertizers?

A. We did.

Q. How about WABB?

A. We did.

Q. You did?

A. Yes, sir.

Q. Through the log. Do you presently have a contract with station WABB?

A. We do.

Q. Did you go through the log of WABB to get their list of advertizers when you sent out this letter?

A. We can get a list any time we want in the stations by just dialing the radio that we listen to, and find out who is advertizing over the radio.

Q. Did you go through the log at WABB to get the list of the advertizers that are on that—

A. I didn't personally go through WABB's list.
Q. Was it done?
A. I don't know. I don't think so.
Q. Was it done, WALA's log?
A. WALA's log was, I did it personally.
Q. You did it personally. How about the other union stations, was their log inspected to get the list?
A. It could have been, Ted Bellon helped me get the list.

Mr. Darby: Could I have that man's name that helped get the list again? Ted—

A. Bellon.

Mr. Darby: How do you spell that?

A. B E L L O N.
Q. Do you know if Ted looked at the log of any of the stations with which the union has a contract?
A. I don't know what he did. I gave him names and he took them.
Q. Did you make any effort in getting up the list to pick out the advertizers of any particular station?
A. We tried to pick out some that we used to call on on WLIQ.
Q. Did you make any effort to pick out advertizers of station WSIM?

Mr. Darby: Objection, mental capacity of his mental efforts.
[fol. 252] The Court: Overruled.
Mr. Darby: Did the witness answer?

A. We did not.
Q. All right. Mr. Smith, do you know Mr. Hale?
A. I do.
Q. Did you have occasion to meet with Mr. Hale on or about August 1st?
A. I believe that was the date.
Q. Who was with you?
A. M. C. Averett and Dave Fridge.
Q. Could you tell us what happened on that occasion?
A. We had an executive board meeting the morning of August 10th, and Mr. Fridge had previously told me that

he was going—that he thought that he was being let go out at WAIP, and I said, "Well, that is not assuming you won't be hired by WSIM, and he said that from all of what he could gather they lead him to believe that they wasn't going to hire him. And, I said, "Well, why don't you be sure and go out there at your regular time, and let them tell you you are not working with them." And, I said, if you are not, you can let us know and we would like to go out and appeal to them to keep you on as an engineer. And, Mr. Fridge has six kids and naturally we are concerned about—

Mr. Darby: I object to what he was concerned about.

The Court: Sustained.

Mr. Goldthwaite: Don't tell what you were concerned about, just tell what y'all did and what the conversation was with Mr. Hale.

A. Well, we didn't want to see the man have to do without feeding his six kids.

Mr. Darby: I object and move to strike the answer.

The Court: Granted.

Mr. Goldthwaite: Go ahead.

A. We went to see Mr. Hale and asked him if there was some way—did he intend to use Mr. Fridge as radio technician.

Q. What time of day was this?

A. It must have been about 9:15 or 10:00, I am not sure. Our meeting was about 9:00.

Q. What happened in the meeting with Mr. Hale?

A. He told us that he didn't have any authority to hire [fol. 253] Mr. Fridge, and I asked him if he wasn't the manager and he said "yes" he was the manager, but he didn't have any authority to hire him, and we told him it was our position that according to a clipping we had clipped from World News Report where U. S. Supreme Court had ruled that station that sold assets of the station also sold the contract and vice versa, station that bought the assets of one station was also buying the contract. And, he said he didn't know about that. And, well,

I showed him the clipping and he read it, and that was all we both had to go on. That was his feeling he didn't think that that was true, and so we asked him if he would give Mr. Fridge a chance to show his ability and let him prove himself. We didn't feel that it was any reason to put a man out of work here and bring somebody in out of town to replace him. Especially after the guy did have six kids that he had to feed and himself and his wife. We pleaded with him; that was the gist of the conversation with Mr. Hale.

Q. Did you say he said he didn't have the authority to hire Mr. Fridge?

A. That's right.

Q. What did he say with reference to, if anything, with reference to who did have authority to?

A. Well, we told him as far as we were concerned he was the manager, and that we didn't know anybody else to talk to. He said, "Well, Mr. Robinson is my boss." And, I said, "Who is Mr. Robinson?" He said, "He is the manager in the head office in Montgomery."

Q. Did he say anything else about Mr. Robinson's position?

A. He said he was his boss, immediate boss.

Q. Did he mention Mr. Holt in your conversation?

A. I can't recall, I am sure he did, the name wasn't strange to me. I wouldn't want to say how I heard it.

Q. In that conversation, did Mr. Hale say anything about a chain of four stations?

A. I—

Mr. Darby: I object to him leading the witness.

The Court: Sustained.

A. I don't remember.

Q. Did Mr. Hale say anything to you about Mr. Stevenson in that conversation?

A. I am not familiar with what he said about Mr. Stevenson, I don't remember that.

Q. You don't recall it. What—did Mr. Hale say any- [fol. 254] thing about Fridge's work during that conversation?

A. I believe Mr. Hale—

Q. Do you recall whether he did or not—say anything about—

A. He did say something about it but I don't know what it was.

Q. Do you remember the substance what he said?

A. The substance was that he was well satisfied with Mr. Fridge's work, and I said, "Well, if that is the case, why don't you just keep him on, that we both agreed." And, he still said, "I don't have authority."

Q. Did you have any conversation with Mr. Hale about the union contract during that meeting?

A. No, sir.

Q. Sir? About the number of technicians—

Mr. Darby: I object to leading the witness, he has already answered the question and now he's trying to impeach him, or do something to him.

The Court: Sustained.

Q. Was anything else said in this conversation, between you and Mr. Hale, Mr. Smith?

A. There was a few things knocked around there, there wasn't anything necessarily pertaining to—other than hiring Daye Fridge.

Q. Was there anything about his plans for the future concerning an engineer?

Mr. Darby: I object to him leading the witness again.

The Court: Sustained.

Q. Do you recall anything else that was said in that conversation?

A. He said he had great plans for the station and that he agreed with Mr. Fridge when Mr. Fridge said he thought he knew the peculiarities of the station and had big ideas of his own, he would just like to have the opportunity to put them into effect, would net more money provided for that purpose.

Q. Well, was any conversation about a consulting engineer?

A. I don't remember what it was.

Q. After that meeting, what did you do with reference to WSIM?

A. I waited on Mr. Hale's call. He was supposed to call Mr. Robinson in Montgomery. I waited until that afternoon and had not heard from Mr. Hale and called back at 5:00, and the young lady said Mr. Hale hadn't come in yet, and—

Q. What was this call you were waiting on?

[fol. 255] A. He was supposed to call Mr. Robinson in Montgomery pertaining to whether to hire Mr. Fridge or not. I called back about, sometime after that to give him another chance to come in, and I finally got him, and he said, "I'm sorry, I've just been too busy all day, I didn't get a chance to call Bob. I'm very sorry but I'll do my best to get in touch with him immediately." And, I think it was the next day, I gave him all the next day to call, and when I called the next day, he didn't—he wasn't in. And, I found out,—I don't know who told me—but I found out he was staying at the Thunder Bird Inn on the causeway, and I called out there, and the manager said he wasn't in; that he was there, but—Then, the second time I called back the manager said, "I'll give you his wife—I'll give you his phone, maybe his wife is in." So, I called and she said he hadn't come in yet, and I said, "Well, how about letting me know as soon as he comes in." So, I said, "I'll be up until midnight." And, I never did get a call from him.

Q. This was on the second of August?

A. I think so.

Q. Then what happened?

A. We waited several days, and it seemed that he was avoiding me.

Mr. Darby: I object to what it seemed.

The Court: Sustained.

Q. What did you do in these several days?

A. I don't remember.

Q. Did you try to get in touch with Mr. Hale?

A. I tried calling him down at the place.

Q. Were you able to get in touch with him?

A. No.

Q. How many times did you call him between the second and—

A. I don't know, but I called him quite a few times.

Q. Did you have another meeting with him?

A. The next meeting we had with him, Mr. Burns and I went out to the station to—I don't like to go to a place by myself like that, so I asked him to go as—so words can't be used against you in case—well, in other words, you won't be framed. So, I asked him to go with me, he has quite a bit of experience in radio and National Labor Relations, and I thought it quite a privilege that he agreed to go.

Q. Who is that, Jimmy?

A. Jimmy. And, we went out there and went in to see if we could meet with Mr. Hale, and he wasn't in, and the [fol. 256] girl said he would be back around noon. So, we sat down in the Coffee Cup next door, across the alley, and had a cup of coffee and we decided, it was about 10:00 then, and we wouldn't wait until noon. So, we had a cup of coffee and I thought maybe he might be down at the Hotel, I mean at the Van Antwerp Building office, the main office, so, I called and the line was busy, and I said, "Well, he's in let's go." So, we took off downtown and finally got entrance after he had a lengthy conversation on the telephone; he invited us to enter and I can't say we were treated any better by anybody than we were by Mr. Hale, and he always was very cordial to us. And, I introduced Mr. Burns to him, and he went on to tell, I believe he told Mr. Hale that he had known Mr. Robinson back from the old days at WKAB, and in that end I let him do the talking to Mr. Robinson over the telephone when we finally got him and Mr. Hale listened in on the phone and—

Q. Did you have any conversation with Mr. Burns before you called Mr. Robinson?

A. Well, how do you mean that?

Q. Concerning the operations of the station there; how it appeared to you?

A. The station, no.

Q. —the intentions of the Company were?

A. I did not.

Mr. Darby: I object to him leading the witness again. Just continuous leading.

Q. Go ahead.

A. What was the question?

Mr. Darby: There is no question. Excuse me, Your Honor.

Q. Go ahead and tell us what happened in this meeting, if you recall.

A. Mr. Hale and Mr. Burns talked a good bit. I don't remember the conversation enough to testify, but I do know that Mr. Burns finally got on the telephone and talked directly to Mr. Robinson.

Q. What was the conversation between you and Mr. Hale about that conversation with Mr. Robinson?

A. In the office then?

Q. Yes.

Mr. Darby: If it please the Court, these objections don't do much good; if the Court could direct counsel not to lead the witness I think it might be more helpful because after he says it the objection really is valueless even though [fol. 257] it is sustained.

The Court: Please do not lead the witness.

Mr. Goldthwaite: If Your Honor please, I really don't think these are leading questions when you ask what was said about something, if there was nothing said about it well, then, you can say so. I'm not putting the words in his mouth. But, I'll try not to.

The Court: Thank you.

Mr. Goldthwaite: Go ahead. Start back at the beginning of this meeting and try to remember every word that was said and tell us all of it, Dave.

A. The primary purpose of going to see Mr. Robinson--

Q. Did you tell Mr. Robinson—

A. Mr. Ha[illegible].

Q. Did you tell him what your purpose was?

A. The idea of us going to Mr. Hale in the first place—

Q. Did you tell Mr. Hale what your purpose was?

A. He knew it.

Q. Did you tell him what your purpose was?

A. We wanted—

Q. Did you tell him what your purpose was?

A. Sure.

Q. Well, what did you tell him what your purpose was?

A. We wanted him to hire Dave Fridge if he possibly could.

Q. OK. Now, tell us what the conversation, the words that were said as best you remember them.

A. I can't remember them.

Q. Well, do you remember the substance of the conversation?

A. That was back at the first meeting. We didn't talk to him about it at the meeting in the Van Antwerp Building.

Q. All right. Now, August 6th, what did you talk about at the Van Antwerp Building?

A. I didn't do much talking at that meeting.

Q. Well, what was said between Hale and Burns?

A. They talked about children.

Q. Great.

A. They both have got plenty of them.

Q. Were any telephone calls were made while you were there?

A. Yes.

[fol. 258] Q. What was said about that? What did you hear being said in Mr. Hale's presence? What did Mr. Hale say about it?

A. Mr. Hale didn't say anything. He listened in on the conversation and, the whole time, and didn't even say a word.

Q. Well, what did you hear Mr. Burns say?

A. I can't recall what it was.

Q. Do you know Tom Adair?

A. I do.

Q. Was anything said in this meeting about Tom Adair?

A. I believe that Mr.—I took it that,—well, I'll tell you this, Mr. Burns told me that on the phone—

Mr. Darby: I object to—

Mr. Goldthwaite: Was this done in Mr. Hale's presence?

A. It was.

Mr. Darby: I object to what he said because it is irrelevant. Mr. Burns might have told him most anything.

Mr. Goldthwaite: If it was in Mr. Hale's presence, it is not irrelevant.

The Court: Well, now, who is Mr. Burns again?

Mr. Goldthwaite: The gentleman who testified just before Mr. Smith.

The Court: All right. Overruled.

A. You have got to remember, it was a one sided conversation I heard, and I can't put the other side in enough to give you any testimony.

Q. I understand that. The question was about Tom Adair and Mr. Burns.

A. Can I say what Mr. Burns told me that Tom Adair said?

The Court: No, sir.

Q. Was it in Mr. Hale's presence?

A. Mr. Robinson said that Tom Adair said,—it was in Mr. Hale's presence. Mr. Hale was listening on the telephone.

Q. Anything that was said in Mr. Hale's presence I want you to tell it right here to the Judge.

A. He said that Tom Adair helped Mr. Holt when he first began his operations, and he didn't have anything to start on except, throw in his neck tie, so to speak, to get enough money to get started in these operations, and now he was the owner of four stations.

Q. Go ahead.

A. That is about all of it.

[fol. 259] Q. What happened after this meeting. Or, do you remember anything else that happened in this meeting?

A. No.

Q. What happened after that?

A. Mr. Burns stated that Mr. Robinson agreed to send us a letter, and the letter was supposed to be at Mr.—evidently it was supposed to be at Mr. Robinson's idea to write as a letter recognizing the local as bargaining agent for WSIM with Local 1264.

Q. What was said about writing the letter?

A. He said he was going to write us one immediately and it would be mailed immediately so we would get it the next morning for a union meeting.

Q. That was Mr. Robinson?

A. That was Mr. Robinson said that.

Q. Mr. Burns told you that in Mr. Hale's presence?

A. Mr. Hale was listening on the telephone when Mr. Robinson told Mr. Burns that.

Mr. Darby: I object because this man has already testified he didn't hear that conversation. So, he doesn't know what Mr. Robinson told Mr. Burns. Move to strike it.

The Court: Sustained; granted.

Mr. Goldthwaite: Did Mr. Burns tell you about this conversation in Mr. Hale's presence?

A. Yes, sir.

Q. What did Mr. Burns tell you in Mr. Hale's presence that Mr. Robinson had said, if anything?

Mr. Darby: We would object to it for the truth of the matter asserted, but we can't very well object to what the man said. Whether it was true or not is something else.

The Court: Well, I am considering it from the standpoint that there may have been a statement that should have required some response from Mr. Hale, I guess it is. Go ahead, please.

A. Well, we left there with the expectation of getting a letter the next morning mailed to 301 Church Street.

Mr. Darby: Move to strike his expectations.

The Court: Granted.

Mr. Goldthwaite: Just tell me what Jimmy said in Mr. Hale's presence about his conversation with Mr. Robinson, if anything.

[fol. 260] A. Jimmy told me that Mr. Robinson said he would write us a letter; that we would get it the next morning at our meeting. The letter would be a letter of recognition. We didn't ask for a letter of recognition, he gave us one; he promised to give us one. That is what Jimmy said.

Q. That is what Jimmy said?

A. Yes.

Q. Did you receive that letter?

A. We did not.

Q. Did you at any time later receive a letter?

A. We received what Mr. Howard gave me as a letter. He said, "Here is that letter—

Q. When did he say this?

A. Mr. Howard said that at a later meeting.

Q. Do you remember the date of that meeting?

A. No. I don't know exactly the date.

Q. How much later was it?

A. I guess it was a couple of days later.

Q. A couple of days later?

A. Uh-huh. A day, maybe.

Q. Sir?

A. Maybe another day.

Q. Do you remember the dates of the meetings you had in Mr. Howard's office?

A. No. Sometime between the sixth and the tenth.

Q. With this Mr. Howard sitting here?

A. Yes.

Q. What happened about that in his office?

A. Well, Mr. Howard called me and asked me if I would like to meet with him. And, I said I would, and I would like to bring Mr. Jimmy Burns with me, and he said, "No. I want to see you by yourself." And, I said, "No, I just soon bring Mr. Burns, if you don't mind." And, he said, "All right. Bring him on." So, we went to see him and he slapped this letter on the desk the first thing after we introduced ourselves. And said, "This is that letter, for what it is worth that you were supposed to have gotten." It was addressed to 31 Church Street.

Mr. Goldthwaite: Just a minute. Would you identify this as Respondent's Exhibit 1, identify as Respondent's Ex-
[fol. 261] hibit 1 as a letter which, copy of a letter appears to be dated August 6th and addressed to Mr. H. D. Smith, Local 1264, IBEW, 31 Church Street, Mobile, Alabama.

(Whereupon, said letter dated August 6th and addressed to Mr. H. D. Smith, Local 1264, IBEW, 31 Church Street,

Mobile, Alabama, was received and marked for identification, "Respondent's Exhibit A".)

Mr. Goldthwaite: Mr. Smith, I show you a document that has been marked as Respondent's Exhibit A, and ask you, what is that document?

A. This document was the letter Mr. Howard gave me, and his words were, "This is the letter you were supposed to have gotten, for what it is worth."

Q. Is that the one Mr. Howard gave you?

A. That's right. The address on,—31 Church Street is incorrect, it's supposed to be 301 Church Street. Mr. Burns told Mr. Robinson I'm sure over the telephone—

Mr. Darby: I object to what he's so sure of.

A. Well, he did tell him.

OFFER IN EVIDENCE

Mr. Goldthwaite: We offer the letter in evidence.

RESPONDENT'S EXHIBIT A

August 6, 1962

COPY

Mr. H. D. Smith
Local 1264 IBEW
31 Church Street
Mobile, Alabama

Dear Mr. Smith:

I was contacted this date by your representative, Jimmy Burns. Jimmy made what I thought was a nice presentation of your local's position and we are, I feel, best described as a "neutral" as far as our station and your union are concerned.

As I mentioned to Jimmy, we believe we are committed to an engineer who acts as a consultant to the stations in our group, and has for a number of years. In the meantime, I would be interested in seeing a copy of the contract that you would submit to our engineer at WSIM in Mobile-Prichard.

I presume that your organization would take it upon itself to organize our representative rather than have us involved with that task. Jimmy Burns mentioned on the phone that he thought your local would go along without having a single engineer at $120.00 per week. If we could either see a copy of your proposed contract or have you itemize the outstanding parts of the contract, (those parts pertaining to cost to the station in time or money) it would probably simplify the matter for us and make it more easily understood.

Looking forward to hearing from you, I remain

Sincerely yours,

RADIO STATION WHHY

[fol. 262]

Bob Robinson
General Manager

BR:ac

cc: Mr. John Hale
Radio Station WSIM

****

Mr. Goldthwaite: All right. What else occurred in this meeting with Mr. Howard? How did you happen to have this meeting in the first place?

A. Mr. Howard called me at work and asked me if I would come over. Mr. Howard,—I take that back. I was on the picket line in front of WSIM studios in Prichard, and the girl came down from upstairs and told me Mr. Howard wanted to talk to me. And, I said, "Well, I'll have to go to a telephone and call him." She said, "You can come on upstairs and use ours." And, I said, "I don't cross a picket line." And, I went on over to the Coffee Cup and called from over there and he suggested we get together.

Q. What happened in that conversation?

A. We made an appointment to meet in his office that afternoon.

Q. Then he gave you the letter?

A. Yes, sir.

Q. What happened after that?

A. I can't remember exactly what happened. That was a very short meeting. We just introduced ourselves, he gave

us this letter; I'm not sure whether we made any arrangements to meet with Mr. Lightsey then or not, but that was made later over the telephone definitely. He wanted the four of us to meet, Mr. Lightsey, Mr. Howard, Mr. Burns and myself.

Q. What happened after that?

A. We waited until that date and we met, and—

Q. Now, in the meantime, had the union undertaken any course of action, Mr. Smith?

A. Well, we were picketing.

Q. When did you start picketing?

A. I don't know; it's in the affidavit.

Q. You are on the stand testifying.

A. I just don't remember; I wouldn't say if I didn't know for sure.

Q. Do you remember about when it was?

[fol. 263] A. About the 10th, I believe.

Q. About the 10th. When was this call from Mr. Howard to come to his office, the first one?

A. I don't remember the date.

Q. Then, did you have another meeting?

A. That one meeting is all we had.

Q. Sir?

A. That one meeting with Mr. Lightsey and Mr. Howard was the only meeting we had.

Q. Now, you had this meeting with Mr. Howard alone, is that correct?

A. We had it with Mr. Lightsey.

Q. No. We—you just testified about meeting with Mr. Howard?

A. That's right.

Q. Now, did you have another meeting?

A. Not with Mr. Howard.

Q. Did you have a meeting, another meeting at Mr. Howard's office?

A. We had two meetings in Mr. Howard's office. We had one with Mr. Burns, Mr. Howard and I in the first meeting.

Q. Yes, sir.

A. The next time it was Mr. Burns, Mr. Howard, Mr. Lightsey and me.

Q. How did you happen to have that meeting?

A. Mr. Howard called me and asked if we could meet with them.

Q. Where were you when he called?

A. I was over at work, WALA television.

Q. What did he say when he called?

A. He said, Mr. Lightsey would be in town, we would like you to meet with us. I said, "When would you like to meet?" He said, "Three o'clock this afternoon if that would be all right with you." And, I said that would be fine.

Q. Do you remember the date of this meeting?

A. No.

Q. Approximately?

A. No.

Q. How long was it after the first meeting in his office?

A. A couple of days I guess. I know it was on Friday because I wanted to go up the country. We remarked on that, Mr. Howard said he was sorry he had to keep me from going up on my day off.

[fol. 264] Q. What happened in that meeting?

A. He went over the contract clause by clause and Mr. Lightsey remarked about some of the things in it; looked favorable to him, he didn't see you'd have to have a contract to give additions like that, and he could do that without a contract. And, that was one of the things I can remember. He seemed to think that the pay scale was all right.

Q. Was Mr. Lightsey there?

A. Yes, he was.

Q. Did you have a conversation with Mr. Lightsey?

A. We talked, yes.

Q. Did Mr. Howard introduce you to him?

A. That's right.

Q. How was he introduced?

A. He was introduced as comptroller of the Holt Service.

Q. Did you have a conversation with Mr. Lightsey or Mr. Howard about that?

A. We did, but I don't remember the substance.

Q. You don't remember it?

A. No.

Q. Was anything else said in that meeting?

A. Yes, Mr. Goldthwaite, there was a lot said in that meeting, but—

Q. Do you remember any of it?

A. I could be refreshed and remember it, but I don't want to put myself in that position.

Q. All right, sir.

A. I'm sorry.

Q. Now, you say you started picketing, Mr. Smith?

A. We did start picketing.

Q. How many picket signs were there?

A. We started off with two in the morning and two in the afternoon, and finally run down to maybe one in the morning and one in the afternoon and felt like it would make it easier on ourselves.

Q. What was the procedure you followed in picketing?

A. No particular procedure.

Q. Did you picket all day?

A. No.

Q. Did you picket during certain hours?

A. We picked the hours ourselves.

[fol. 265] Q. During what hours did you picket?

A. From nine to eleven and from about three to five; three in the afternoon gave some of us a chance to get off from work and get our picket signs and go down there, and usually around 3:30 to 5:30.

Q. Two in the morning and two in the afternoon?

A. That's right. And then it got to where we had one on, and sometime we would go along with one another just for company.

Q. Were the signs just alike?

A. Yes.

Q. What wording was on the signs?

A. WSIM, Non-Union.

Q. WSIM, Non-Union. Anything else?

A. AFL-CIO: Local 1264, AFL-CIO.

Q. Did you engage in any other conduct in connection with this?

A. We called on advertisers and—

Q. Did you send out any letters?

A. We sent out letters.

Q. Identify this, please. Document—ask that document headed Radio Broadcast Technicians, Local 1264, IBEW, AFL-CIO, addressed to all merchants in the Mobile-Prichard area, be identified as Respondent's Exhibit B.

(Whereupon, said document headed Radio Broadcast Technicians, Local 1264, IBEW, AFL-CIO, addressed to all Merchants in the Mobile-Prichard Area was received and marked for identification, "Respondent's Exhibit B".)

Mr. Goldthwaite: I show you this document marked as Respondent's Exhibit B, and ask you what that is.

A. This is a letter, an appeal to the advertisers in the Mobile-Prichard area.

Mr. Darby: I object to what it is in that respect, it speaks for itself.

Mr. Goldthwaite: Do you recognize the letter?

A. I recognize it.
Q. What do you recognize it as?
A. Just what I said.
Q. Whose letter is it?
A. It is our letter.
Q. Whose letter?
A. Local 1264, IBEW.
Q. What sort of letter?
[fol. 266] A. It is a letter to advertisers.
Q. When was it sent out?
A. It was sent out during the time that we were picketing.
Q. At WSIM.
A. That's right.
Q. Now, to whom was it sent?
A. It was sent to advertisers and prospective advertisers.
Q. To advertisers that had been on WSIM?
A. That's right, and had been on WAIP and on other stations.
Q. And, some on other stations?
A. That's right. Because, that is where we get our list from.
Q. Now, is that the same list that this Petitioner's Exhibit—what's that one Judge?

The Court: One, I believe.

Mr. Goldthwaite: —Complainant's Exhibit No. 1, were they sent to the same list?

A. No.

Q. Different list?

A. Yes. Eight months later.

OFFER IN EVIDENCE

Q. Now, did you—we offer this in evidence, if Your Honor please.

Mr. Darby: No objection.

The Court: All right.

CLERK'S NOTE:

Respondent's Exhibit B—Letter from Radio Broadcast Technicians Union, Local 1264, IBEW, AFL-CIO—479-2432 addressed "To All Merchants In the Mobile-Prichard Area" has been omitted from the record here. Please see side folio 12, printed page 11.

[fol. 267] Mr. Goldthwaite: How many of these did you send out, do you recall? That's Respondent's Exhibit B.

A. We sent out several reams of those sheets of paper.

Q. Several reams?

A. That's right.

Q. How many's in a ream?

A. About five hundred or a thousand.

Q. Is that the only one you sent out?

A. At that time. I don't know, it might have been another letter. I—would have to check back.

Q. Did you send out more than one letter in connection with WSIM?

A. I don't believe we had time.

Q. Just, as best you remember. What did you do?

A. Well, I'll say I don't know. I'm sure we sent that one.

Q. You sent this one. Did you send out any others?

A. I don't believe so.

Q. Do you remember how many copies of this letter you sent out?

A. Well, it is like I told you; we sent them out by the stacks, I can say that.

Q. How many copies of Respon nt's Exhibit,—Complainant's Exhibit No. 1 did you send out?

A. We sent out three hundred, I know definitely.

Q. Three hundred. Did you engage in any other activities with reference to station WSIM?

A. Before or after the injunction?

Q. Before the injunction.

A. We called on advertisers personally, the committee did.

Q. What was said to the advertisers?

A. I don't know; I wasn't on the committee.

Q. You weren't on the committee. Now, are you familiar with—is there a trade publication in the Broadcasting industry?

A. Broadcasting.

[fol. 268] Q. It's named, Broadcasting?

A. Yes.

Q. What is "Broadcasting"?

A. It's a magazine that is very exclusive to the industry, it is not sold on the market; highly expensive. Comes out weekly, I don't know whether it is weekly or bi-weekly, but it has all publication news concerning exchanges of ownership, new grants in licenses, changes of call letters, anything that happens in the radio or television industry which is of any importance is listed in there.

Q. Do you see that magazine from time to time?

A. Once in a while.

Q. Do you recall seeing an issue in which there was some reference to the sale of WAIP?

A. We cut the clipping out, threw the magazine away, but we have the clipping.

Q. Do you remember what the issue of the magazine was?

A. No.

Q. Did you help cut the clipping out of it?

A. No, I didn't.

Q. You didn't. Was it cut out in your presence?

A. I don't remember if the guy who cut it out—I know the guy who cut it out.

Q. Who cut it out?
A. Ted Bellon.
Q. Ted Bellon.
A. If he said he cut it out, he cut it out.
Q. He's not here though. What I ask you is—where was this clipping cut out of the magazine?
A. Down at the studio, WALA television.
Q. WALA? Did you see this magazine before the clipping was cut out of it.
A. I would not want to testify as to whether I did for sure; I don't know.
Q. Did you see Ted cut the clipping out of the magazine?
A. I just said I didn't.
Q. You didn't?
A. That's right.

Mr. Goldthwaite: He's with you.

[fol. 269] (Whereupon, the Court recessed for lunch at approximately 1:00 P.M. and resumed at approximately 2:15 P.M., after which the following occurred:)

Mr. Goldthwaite: May it please Your Honor, if necessary we are going to file a motion to quash this subpoena which was served on Mr. Smith on two grounds; one is that it is not within his personal powers to produce the records requested because he does not have custody of them—

Mr. Darby: I want to question him on that.

Mr. Goldthwaite: All right. The second one is that the subpoena requests documents which are on the face outside the period of inquiry in this case, and it would be an undue intrusion in the affairs of a local to request documents that were not restricted in period of time to the inquiry being made by the Court. It requests documents, all minutes of union meetings beginning June 1st, 1962, up and including all meetings through April, 1963. Well, this controversy began on August 1st so that would be June and July records which there would be no justification for compelling the production of those records at all. We will file a written motion putting this in formal fashion.

The Court: Well, I'm going to deny your motion on both grounds to quash the subpoena. I don't know that quash-

ing the subpoena, subpoena duces tecum, because the man doesn't have requested under his control is a proper motion. In the past when that has come up the man has simply presented himself in Court and said, "Here I am but I don't have what you told me to bring because it isn't mine, and it is not under my control."

Mr. Goldthwaite: Well, Your Honor has got the point I'm talking about. Mr. Smith is here personally and submits to the subpoena in that extent.

The Court: Wel', I'm denying your motion to quash, but if the records that you requested are not under his control, I see no way the Court can require it.

Mr. Darby: He has not so testified yet, Your Honor.

(Here occurs further discussion of counsel.)

On cross examination.

By Mr. Darby:

Q. Mr. Smith, what is your position with Local 1264?
[fol. 270] A. Business Agent.

Q. Are you a paid official?

A. I am not.

Q. Is that the chief position in the union, business agent?

A. I never heard that it was.

Q. Are you the one that is supposed to handle the business affairs of the local?

A. We don't have anything set up that would show any positive indication that I am that.

Q. What are your duties as business agent?

A. One of the duties is to try to negotiate contracts when a contract expires and you act as a representative from the union with management, another duty is that you, the shop stewards call you up from the other stations or my own station and tell you when they have a grievance, and my duty, primary duty, is to look into it and if possible to try to keep harmonious relations between management and labor; and, still everybody is happy and goes along on a smooth keel.

Q. Do you have a key to the union headquarters?

A. I do.

Q. Where is it located?
A. In my pocket.
Q. Where are the union headquarters located?
A. 301 Church Street, not 31 Church Street.
Q. Where are the union minutes?
A. I don't know where they are.
Q. Have you looked at 301 Church Street?
A. I know they are not at 301 Church Street.
Q. Did you look there?
A. I know who has them?
Q. Who?
A. Cliff Sizemore.
Q. Where does he live?
A. He lives somewhere out in the western part of town.
Q. You don't have any better address than that on him?
A. I know about where he lives because I lived—I worked for a T. V. service for a customer next door to him; good friend of his.
Q. What street does he live on?
A. Fountainbleau.
Q. Where does he work?
[fol. 271] A. He works at WTUF, formerly WKAB.
Q. Have you talked with him today?
A. I have not.
Q. Do you know what his working hours are?
A. No. I don't.
Q. Have you had possession of those minutes within the last three or four months?
A. I don't even see them.
Q. You have never seen them?
A. I see them across the table. I don't read them; he reads them back if necessary.
Q. What kind of book are they kept in?
A. I don't know.
Q. You have seen the book—
A. I have seen the minutes.
Q. They are not in any kind of book?
A. I don't know.
Q. When you saw them, were they in a book or were they on loose sheets of paper?
A. I don't remember.

Q. You don't remember whether they were in a book or on loose sheets of paper?

A. I'd tell you if I did.

Q. Do you keep the minutes of the executive board and your union minutes in the same book, or do you know?

A. I don't.

Q. Who are the members of your executive board?

A. Shop stewards from the different stations.

Q. Who are they?

A. Bill Rayburn is a shop steward.

Q. Is Bill Rayburn a member of the executive board?

A. All shop stewards are members of the executive board.

Q. Who else?

A. Cliff Sizemore. A fellow by the name of Haas out at WMOZ and Mr. Averett from WABB, I believe. I'm not sure.

Q. Any other members of the executive board?

A. Drew Rutherford.

Q. Anyone else?

A. No.

[fol. 272] Q. How about yourself?

A. I'm not a member of the executive board.

Q. Do you attend the meetings?

A. I can if I want to.

Q. Do you?

A. I do.

Q. Are you acquainted with this letter?

A. I am.

Q. I'm referring to Complainant's Exhibit 1.

A. Yes, sir.

Q. Did you participate in sending it out?

A. I surely did.

Q. Who else by name participated in sending it out that was a member of the union?

A. Ted Bellon, at my instructions.

Q. Who else?

A. I don't think anyone else had any particular physical aid in it.

Q. Did you take it up at the executive board meeting?

A. Didn't have to.

Q. Did you?

A. Did not.

Q. Did you take it up with the membership?

A. No.

Q. You and Mr. Bellon did that on your own?

A. That's right.

Q. Was that within the scope of your duties as Business Agent?

A. If there had been anything illegal, what we thought was illegal we would have contacted both our attorneys and the executive board and the membership, and it so happens that our attorney designed this letter for us.

Q. Which one of your attorneys designed it?

A. Mr. Adair—Mr. Goldthwaite, right there.

Q. When and where?

A. Here in Mobile.

Q. When?

A. I don't know. I don't know the date.

Q. Well, you give us the date as best you can.

A. Well, what you are trying to make me say, you know [fol. 273] as well as I do.

Q. Well, you give me the date as best you can, please, Mr. Smith.

A. Well, I can't give it to you. I don't know.

Q. Was it immediately after the hearing in which your local union was enjoined from certain activities with respect to WLIQ?

A. It was.

Q. Was it the same day?

A. It was.

Q. Who is it that chose the advertisers to send that letter to?

A. I did.

Q. Did you choose Mr. Bob Williams of Trane Air Conditioning Company?

A. If his name was in a newspaper, I chose it or in the telephone book in the yellow pages.

Q. All right, sir. What if he only advertised on one radio station in town, namely, WSIM, did you choose it—

A. No, sir.

Q. Tell us the source that you got your information from.

A. I got it from several sources as I stated this morning.

Q. You got it from the newspaper?

A. Some of it.

Q. You tell us again where you got it, please.

A. I got it from the newspaper, I got it from the telephone book, and I got it from some of our old lists that we used on WLIQ previously.

Q. Some of those people that you sent that letter to advertised over WSIM, did they not?

A. I was not interested in that.

Q. I didn't ask you that. I asked you, Mr. Smith, did some of the people to whom you sent that letter advertise over WSIM?

A. I don't know.

Q. As a matter of fact, you know that some of the people to whom you sent that letter advertised over WSIM only, do you not?

A. No, sir.

Q. You don't know that to be a fact?

A. I don't know that to be a fact. I wasn't interested.

Q. Now, isn't it true that Hamm's TV and Appliance Company has advertised only on station WSIM in Mobile, Alabama, during the last six months and over no other radio station?

[fol. 274] A. Well, may I answer this in my own way? Mr. Darby, I'm not a paid official of this union. I work another business that takes all my time, and I try to take care of what is necessary in this union, and I don't have time to go around and find out whether Mr. Hamm advertises over WSIM or not; I don't even care.

Q. In other words, when you sent that letter out, you didn't care whether you caught WSIM advertisers or not, is that it?

A. It was not in my mind.

Q. It wasn't in your mind. Whose advertisers did you want to get?

A. I didn't have any particular advertisers in mind. We sent out three hundred, WSIM, WLIQ and several others probably don't have three hundred all together at one time. That's a lot of advertisers.

Q. When you sent it out, you didn't care whether you caught WSIM's advertisers or not, is that your testimony?

A. We were sending it out for a different purpose from what you are trying to make me say. Well, if you want me to tell you why I sent it out, I'll be glad to do that.

Q. Yes, sir. I would like for you to.

A. Down through the years we have been hounded by entire union management. Some of them had been good and generous and amicable with us and we have enjoyed their relationship, but there have been some that have been determined to "plow us under" so to speak, and it's been all we can do to stay above board. And, this is the result of it, right here.

Q. All right. Now, would you please tell the Court which of the two management—excuse me. I'll withdraw that. Is WSIM one of the managements that you refer to that has tried to "plow you under"?

A. You can say that if you want to.

Q. I asked you, Mr. Smith.

A. I'm not interested in WSIM. We have an injunction against us—WSIM, I cannot do anything about WSIM at this time.

Mr. Darby: Would the Reporter repeat,—read the question for me, Your Honor, maybe I can get an answer.

(The Reporter so does.)

Mr. Pelham: Would the Reporter read his answer to it.

(The Reporter so does.)

Mr. Pelham: He answered the question.

Mr. Darby: I submit he has not answered it, Your Honor.

The Court: I don't think he has either. The question is, [fol. 275] "Is WSIM one of the stations which you feel is trying to plow you under?"

A. No.

Q. Name the stations that you refer to trying to plow you under.

Mr. Goldthwaite: If Your Honor please, I don't think that is relevant to this investigation.

The Court: I don't think it is either, but when a witness makes a statement like that I don't know that I have to

require the lawyer to let it lie. However, I think if you are objecting, I'll sustain the objection.

Mr. Darby: Your Honor, I submit I am entitled to find out to whom he is referring, if nothing else to test his credibility.

Mr. Goldthwaite: If you want to make a charge against the man—

The Court: Mr. Goldthwaite, the Court's ruling with you—

Mr. Goldthwaite: Pardon me, sir. I apologize.

The Court: I don't think it adds anything to this hearing, Mr. Darby, I'm going to sustain the objection.

Mr. Darby: Would you tell us, please, I don't think we got an answer before, the sources that you got these names from, where you sent this letter, Complainant's Exhibit No. 1.

A. You are not sure about what I said, the names?

Q. I want you to tell us please the places you got them, that you participated in getting them.

A. We picked the names, like I said, from newspapers, the telephone book, and off WALA's log, and compiled a list—the main thing, for instance, I took one of these copies and show it to Mr. Tom Jackson, Manager of WALA radio to let him know what we were doing, so that he would know that we were trying to uphold working conditions in Mobile by such actions.

Q. Then—

A. That's in our favor, in other words.

Q. Was it after you showed it to Mr. Tom Jackson that he let you look at his log?

A. No. He don't have to, I work with the log every day. I put the log up.

Q. Did you make a written list, Mr. Smith, of the people to whom you mailed that letter?

A. Sure.

Q. Where is the list?

[fol. 276] A. I don't know. We probably threw it away.

Q. Do you have any of the lists to whom you mailed letters to advertisers?

A. I don't know.

Q. Where was the list the last time you saw it, Mr. Smith?

A. I couldn't tell you where it was the last time I saw it.

Q. You don't recall. Where did you address these envelopes?

A. At the union hall.

Q. Do you remember what day of the week it was?

A. No, sir.

Q. Did you mail them the same day?

A. I don't know. I didn't mail them.

Q. Who mailed them?

A. Ted Bellon.

Q. Did you participate in the addressing of them?

A. No, sir,

Q. You say you got some of these names out of the phone book?

A. Sure. Yellow pages.

Q. Yellow pages of the phone book. Did you particularly get the ones out of the phone book?

A. Some of them.

Q. Did you get the—

A. There was about three hundred names.

Q. Did you get Mr. Bob Williams name of Trane Company out of the book?

A. I don't know.

Q. You don't know where it came from?

A. I wasn't interested.

Q. You are not prepared to testify, then—

A. We needed about three hundred names.

Q. Well, then, you cannot testify that the other person that worked with you did not choose that name because it advertised on station WSIM, can you?

A. I can't testify what he thinks or feels; I can't even say what I think.

Q. Well, do you know whether you are the person who chose Hamm's TV and Appliance Company to send a letter to or whether the other gentleman who was helping you chose Hamm's TV and Appliance Company?

[fol. 277] A. No, sir.

Q. You don't know?

A. I don't know.

Q. You know it is not in WALA's log, don't you?

A. I don't know that.

Q. You know that Bob Williams of Trane Air Conditioning is not in WALA's log, don't you?

A. I never heard of Bob Williams.

Q. What other job do you have, Mr. Smith?

A. Business Agent for Local 1264.

Q. Well, you said you have another job that kept you busy all the time, what job is that?

A. I do my own television service work.

Q. You are self-employed?

A. That's right.

Q. Now, how many technicians were employed at WAIP immediately before August 1st, 1962?

A. Two.

Q. Who were they?

A. Dave Fridge and John Clonts.

Q. Now, John Clonts didn't work over there, did he, Mr. Smith?

A. It was my impression that he did.

Q. As a matter of fact, you know that Mr. Clonts did not receive any pay for working over there for way over a year prior to the time they sold that station, don't you?

A. I didn't know that.

Q. He didn't take that up with you?

A. He didn't have to.

Q. He didn't take it up with you?

A. He didn't.

Q. You were the Business Manager of the union to enforce the contract over there, weren't you?

A. That's right.

Q. Did you make any investigation to determine whether WAIP had more than one technician?

A. Getting back to what I told you a while ago, that I'm not being paid for this job, and I do all I can for it to take care of the important things first. It so happens right at that time we were having trouble with WLIQ, and it [fol. 278] was taking all my time; I didn't have time to worry about it.

Mr. Darby: Could you still answer the question, please? Could the Reporter read the question.

(The Reporter so does.)

A. Just before the station was sold, before we did any contacting over there, I went to John Clonts, and I asked him, "Johnny, you are working there?" And, he said, "Yes". I said, "Well, are you getting paid?" "Well, no, I haven't been paid." And, I said, "Well, don't you consider you are a member over there." He said, "I thought I was." Well, it is just this way, Mr. Darby, we can't make those guys work, and it just so happened he was working for WALA, he told us he was working for WAIP, and why should we try to prove otherwise? He is not a member of the union; we wanted him to be a member of the union, we begged him to be; we showed him where he should be. He decided he wouldn't, he'd rather go ahead and accept the advantages and privileges of being protected by the union, but he didn't care about paying dues, and we have got others that feel the same way, and he was one of them. And when the time came to get Dave Fridge back on the job, we left Johnny Clonts out.

Q. Now, when did the time come to get Dave Fridge back on the job?

A. When we found out that WAIP was sold and WSIM would not hire him.

Q. What did you do to get Dave Fridge back on the job?

A. We went to see Mr. Hale and asked him if he would assure us that he was still on—

Q. You didn't receive such assurance, did you, Mr. Smith?

A. No.

Q. And, you put up a picket line after you failed to receive that assurance, didn't you, Mr. Smith?

A. You needn't put it that way; it didn't come about just like that.

Q. Did you put up a picket line after you failed to receive the assurance that Fridge would be employed?

A. I didn't—in that line of thought.

Q. What other assurance did you want, if anything, from WSIM immediately before you put up a picket line?

A. We wanted assurance that they would tell us—that we would know whether or not, we wanted to be sure that we [fol. 279] knew whether or not they wanted to be non-union.

Q. You wanted them to recognize your union, didn't you Mr. Smith?

A. We never have said that. I never have said it.

Q. You mean, you've been careful not to say it.

A. We didn't say it.

Q. You wanted the contract, didn't you?

A. The attorneys tried to make us say it.

Q. I asked you, did you want a contract, Mr. Smith?

A. We would like very much to have a contract with them.

Q. All right. Then, you have wanted a contract since you started picketing them, have you not?

A. Have wanted?

Q. Yes, sir. With WSIM.

A. I guess we'll always want a contract with them; we would rather have it that way.

Q. That was one of the purposes of putting a picket line up, was to get a contract with them?

A. No, sir.

Q. What was the purpose?

A. The purpose was to equalize the economic conditions concerning the other stations that did have contracts with us and that were upholding union working wages and conditions.

Q. Who told you that was your purpose, your attorney?

A. I learned it back through the years that we have experienced.

Q. You learned, did you not, under some decisions of some Court that if your purpose was merely to equalize the conditions as distinguished from getting a contract that it was legal; therefore, you knew what your purpose was, is that correct, Mr. Smith?

A. Well, I don't care what you are trying to make me say, that is not what we tried to do.

Q. You did want Mr. Fridge employed, didn't you?

A. Certainly, I told you so.

Q. All right. You wanted a contract, didn't you?

A. I said so.

Q. All right. And, that was what your objective was when you put up the picket line, wasn't it?

A. I also said—

Q. Wasn't that your objective when you put up the picket line?

A. No, sir.

[fol. 280] Q. You wanted the advertisers of WSIM to stop advertising over WSIM, did you not?

A. Certainly did.

Q. You asked them to do it, did you not?

A. Yes.

Q. Did you go talk to some of them yourself?

A. No, sir.

Q. I am showing you Respondent's Exhibit B, did you compose that letter yourself, or was it composed for you by someone else?

A. You mean this one here where it says it's a member of the Holt Broadcasting Service?

Q. Yes, sir. This one that is Respondent's Exhibit B. Did you compose that yourself?

A. Yes, sir.

Q. Is this your word down here, "help us preserve the decent wages and working conditions which we have established over a period of years by placing your advertising only with union stations."

A. Right.

Q. Now, this other letter. Did you compose this language, or is that all Mr. Goldthwaites? "You can help promote prosperity in our area by placing your advertising on broadcast stations which uphold fair employment conditions. WABB, WALA, WALA-TV, WMOZ, WTUF. They pay us more money so that we have more to spend with you." Did you help your attorney compose that letter or did he do it all for you?

A. He told me to write it down and he would look at it and see what he thought about it, and I did.

Q. All right, sir. Now, this WABB, that is a station having a contract with your 1264?

A. Yes, sir.

Q. WALA has a contract with 1264?

A. Yes.

Q. WALA-TV has a contract with 1264?

A. Yes.

Q. WMOZ has a contract with 1264?

A. Yes.

Q. WTUF has a contract with 1264?

A. Yes.

Q. Any other television station or radio station in Mobile have a contract with 1264?

[fol. 281] A. If there had been we would have put it on there.

Q. All right. You don't have any personal knowledge of whether Mr. Clonts actually worked over at WAIP prior to the time WAIP sold to WSIM, do you?

A. It was general knowledge that he was working there, and I don't remember when he quit, if he did. I just don't remember.

Q. Did you have any personal knowledge that he worked over there, that he actually went over there and did some work?

A. No, sir.

Q. As a matter of fact, it was pretty well talked about among you technicians, was it not, that Mr. Clonts wasn't a very good man, he just said he was working over there when in truth and in fact, he was not?

A. I don't say he's a very good man, I say he wasn't working there at the time they sold the station. He said he was working there, but also said he hadn't been paid. So, you can draw your own conclusions on that.

Q. Well, now, you talked to one of the union people in your own organization, and y'all reached the conclusion that he was not working there, did you not? Among yourselves.

A. I don't remember.

Q. You heard Mr. Burns' testimony, did you not? That he knew that Mr. Clonts was not working over there, that they had a one man operation?

Mr. Goldthwaite: If Your Honor please, that is a misstatement of Mr. Burns' testimony.

The Court: Overruled. The question was, "did you hear him say that?"

A. Did I hear Mr. Burns say that? I am not sure; I wasn't paying any attention, if he did.

Q. You don't remember what Mr. Burns said.

A. Some of the things he said, but I don't remember that.

Q. It is a fact, is it not, Mr. Smith, that you and Mr. Burns, had previously talked about the fact that WAIP only had one technician that was actually working over there before they sold out, did you not?

A. It's like I told you a while ago. We provided the wages and working conditions in a contract, and if you have a mutual agreement between a man and station management, there is nothing we can do about it. And, it was my [fol. 282] understanding at the time that they could hardly pay the ones they were keeping over there. And, so, like I told you, I was too busy with other things since I was not getting paid for this to worry about John Clonts.

Mr. Darby: May the Reporter read the question, please, Your Honor?

The Court: How much is in dispute in this case—

(Off the Record Discussion.)

Mr. Darby: On August 1st or about that time, what time was it when Mr. Fridge first talked to you, Mr. Smith?

A. What time was it?

Q. What time of day was it?

A. I believe he called me, I'm not sure, but I think he called me the night before, it may have been two days before. We were aware of the fact a couple of days anyway ahead of time that WAIP had been sold, as to whether or not they were going to buy the contract; if they was going to buy it we wanted to go negotiate another one—

Q. When did you decide to go out with Mr. Fridge on the first day the station commenced operation?—that is WSIM.

A. I asked him to go out first and appear for work and let them be the ones to tell him he wasn't going to work rather than him go out there and ask if "Are you going to give me a job?" That would tie it down definitely what the intent was.

Q. You told him that several days before hand?

A. I told him that the night before when he called my house.

Q. And, when did you first decide to go out to WSIM?

A. After he would have time to go out and talk with them and let them give him some definite answers as to whether or not he was employed.

Q. Were you working at the time?

A. I think it might have been one of my days off.

Q. When did you first decide to go yourself? What time of day was it that you decided to go yourself?

A. As soon as he came back to the union meeting and told us that they said in their opinion he was not working there. They couldn't OK it.

Q. Mr. Fridge reported to the union meeting that he had been told at WSIM that he was not working for them? That is what he reported to a union meeting?

A. Something to that effect. I don't know exactly.

[fol. 283] Q. After he made that report you and he left the union meeting and went out to WSIM, is that correct?

A. That's right.

Q. And, who did you find when you got there?

A. I don't know who all was in there, but we were introduced to Mr. Hale, he was on the telephone at the time. And, as soon as he could leave he came back and apologized for being held up and we went back in a room there, they didn't have no furniture in the room, and stood up and talked.

Q. And, who was with you besides yourself and Mr. Fridge?

A. Averett.

Q. And, what was Mr. Averett's job?

A. He was a member of the union at the meeting.

Q. Member of the Executive Board?

A. Yes, sir. I believe so.

Q. Were you having a regularly scheduled union meeting?

A. No, sir. Special called meeting.

Q. To determine what to do about Mr. Fridge?

A. Yes, sir.

Q. Was that an Executive Board meeting or a regular union meeting?

A. It was a regular—I don't know which. I felt like I ought to have some union behind me; I don't like to do anything on my own that I don't think the union would

back up. So, I don't know whether it was a special called meeting or not.

Q. Were you given any instructions by the group when you left that meeting?

A. I don't know what you mean.

Q. The meeting—did your membership at the meeting vote to give you any kind of instructions to instruct you as to what to do?

A. Could you be a little more explicit?

Q. No, sir. Could you answer the question?

A. I don't believe I could.

Q. It's your testimony then, that you held this meeting to find out what to do and then they didn't tell you what to do?

A. They wanted me to go out and talk to Mr. Hale before we took any further procedures to try to get Mr. Hale to say that he would hire Dave Fridge.

Q. The union meeting and the people there wanted WSIM to hire Mr. Fridge, is that correct?

[fol. 284] A. Well, we had a contract expire there, Mr. Darby, and that concerns a union. It automatically expired or it kept on going, we wanted to know; it concerned the whole union not just me, not just Dave Fridge. They were all concerned about it.

Q. When you got out to WSIM, you talked to—the three of you talked to Mr. Hale by himself?

A. I believe so.

Q. Who did most of the talking on behalf of the union group?

A. Different ones of us.

Q. All of you?

A. All of us.

Q. What did Mr. Averett have to say?

A. He was like the rest of us.

Q. What did he say?

A. I don't know.

Q. You can't recall anything that Mr. Averett said?

A. Not right off. I would rather not say anything than to say, "I think", and I don't even, I just don't remember that well; it has been eight months ago.

Q. You remember what you said—

A. I remember part of what I said, and I didn't come right out and tell you that I knew for sure, either.

Q. You remember what Mr. Hale said, did you not?

A. Some things you remember in life and some things you forget easy.

Q. You remember more about what Mr. Hale said than you remember about what Mr. Averett said, is that right?—or is your memory about the same on both of them?

A. I don't know how my memory works in that respect.

Q. Well, now, do you recall what you said, Mr. Smith?

A. Yes. I remember some of the things I said.

Q. Do you remember what Mr. Fridge said?

A. Mr. Fridge told them that he wanted a job, that he had six kids to feed.

Q. What else did he tell them, if you remember?

A. He told them he felt he could do them a good job with the money to operate with; he had some good ideas of his own that he didn't have a chance to try out so far.

[fol. 285] Q. What else did he tell them?

A. I don't know unless he told them again he had six kids to feed.

Q. That's all you remember him saying?

A. No.

Q. Do you remember more?

A. No.

Q. Now, tell us what you said.

A. I told them we were glad to have them in the area. We were interested in promoting good relations between our labor organization and the management, and we felt that it was part of our duty to try to uphold good standards of broadcast as well as working conditions for the labor personnel.

Q. Do you remember anything else you said?

A. I told them that we had a clipping from a magazine—after he told us that he didn't think the contract was valid any more, that they didn't buy a contract, we told him that we had a clipping that showed that the Supreme Court had ruled that when one buys a radio station he also buys a contract. At that time, that is what we were going on,

and we would hold firm until we had some reason to believe otherwise.

Q. You told Mr. Hale he had a contract with your union, didn't you?

A. Told him it was our assumption that he had one.

Q. Your contention that he had one.

A. I don't know what you mean by that.

Q. You told him Fridge was working for him, didn't you?

A. I told him as far as I—as that clipping was concerned it would seem that he was still working for him.

Q. So—

A. Should be, if that was true.

Q. You were going to—you told him you were going to leave him there and draw his pay, and he just as well use him?

A. I did not.

Q. You didn't say that?

A. No, sir.

Q. Your memory is good on that. How long did you stay there on that occasion?

A. I don't guess more than fifteen minutes.

[fol. 286] Q. What else do you remember Mr. Hale saying to you?

A. He said he did not have authority to make any decisions. I told him then I don't know who else we could talk to, I understood he was the manager, and anywhere else in town if you go to a radio station and talk to anybody, you talk to the manager. He insisted he wasn't the man; he insisted I call Mr. Bob Robinson in Montgomery, and I said, "I don't know Mr. Bob Robinson, he would have to—I don't intend to call Mr. Bob Robinson, if he's your manager I think you could call him a lot easier than I could. You know how to get in touch with him, and I just as soon wait on whatever he says to you."

Q. What else, if anything, was said?

A. I don't remember.

Q. That is all you recall—what you and I have been over now?

A. Mr. Darby, I apologize to the Court and to you. When you ask me what else happened, it is not I'm trying to hold out or anything, it is just because I don't have a very good memory. Some things I do, I can remember some things that happened when I was six or seven years old vividly, and some things I can't remember that happened last week. I apologize.

Q. When was it determined to put a picket line up around WSIM?

A. When we had determined that WSIM had determined to operate non-union. Because they did not answer us; we simply asked for an answer as to whether they wanted to operate non-union or not. They didn't answer us and we had nothing else to go on.

Q. And the reason that you put the picket line up was because WSIM had determined to operate non-union, is that correct?

A. They had determined in our estimation by not writing to us and telling us; this letter came late, came after our picket line was up.

Q. In other words, when you failed to get the letter from Mr. Robinson recognizing Local 1264, you determined to put up the picket line?

A. It was Mr. Robinson's idea to send the letter.

Q. Would you answer the question, please, sir?

A. Would you repeat the question.

Mr. Darby: Would the Reporter repeat the question, Your Honor?

(The Reporter so does.)

[fol. 287] A. May I answer it in my own way? I believe that he is trying to make me say that we asked for a letter of recognition and we did not. He was supposed to write us a letter giving us an opening to go ahead if we felt that he wanted to negotiate a contract, and he would write a letter to that effect. So, when he did not, then we waited and it had been so hard to get a hold of him before that, we knew he was stalling on letting us know whether or not they wanted to operate non-union. It's just as simple as that, they either wanted to operate non-union or they

didn't want to, and they had a right not to. And, they chose not to by not writing to us. As far as I know this letter was deliberately sent to 31 Church Street instead of 301 Church Street so it would be delayed, and it would come back to them. And, that is what happened.

Q. Now, Mr. Smith, to operate union, you would have a contract with the union, would you not?

A. If they wanted to operate non-union, you would assume that they would not have a contract.

Q. So, you wanted the station to sign a contract with 1264, is that correct?

A. We always want them to sign a contract with 1264; we do now. Wish they would.

Q. You don't claim to represent any of their employees, do you, Mr. Smith?

A. No, sir.

Q. You have never represented any of their employees, have you, Mr. Smith?

A. No, sir.

Q. You have never claimed to represent any of their employees, have you, Mr. Smith?

A. No, sir.

Q. Did your attorney inform you that it was against the law for you to sign a contract with an employer when you didn't represent any of their employees?

A. Yes.

Q. He told you that?

A. Wait, he didn't have to tell us.

Q. All right. Now, the purpose of the picketing was to get WSIM to sign a contract with 1264, wasn't it?

[fol. 288] A. No, sir.

Q. Didn't have anything to do with it?

A. No, sir.

Q. The purpose of the picketing was to encourage WSIM advertizers to boycott it, wasn't it, Mr. Smith?

A. The purpose of the picketing was to encourage advertizers to use union stations.

Q. Mr. Smith, did you read the answer that you swore to in this case?

A. Several times.

Q. Was it true when you signed it?
A. Yes, sir.
Q. Is it true now?
A. I guess so.
Q. Well, let me see if I can refresh your recollection as to the purpose of the picketing. I hand you the second amended complaint, excuse me—the amended bill of complaint in this answer, and refer you to Paragraph 18 thereof on Page 3. "Respondent since August 10, 1962, has been picketing, letters addressed to persons, firms and corporations, and by personal contact sought to effect a boycott of Complainant and to cause persons doing business and desiring to do business with Complainant to cease doing business with Complainant and to refrain from doing business with Complainant." Is that what Paragraph 18 of the amended complaint, bill of complaint, says?
A. It seems so.
Q. All right, sir. Could I have the answer, Your Honor?

The Court: I don't have it.

Mr. Darby: Thank you. Now, Mr. Smith, I hand you the answer to the amended bill of complaint and first ask you whether or not you signed that answer on the page attached to it, State of Alabama, County of Mobile, Personally appeared before me the undersigned officer authorized by law to administer oath, H. D. Smith, who after being first duly sworn deposes and says that he is Business Manager of Respondent, Local 1264, IBEW and in his capacity as an individual respondent has knowledge of the facts recited in the above and foregoing answer and the same are true and the facts alleged on information and belief, he verily believes to be true." Followed by the name H. D. Smith, sworn to before someone, is that your name, Mr. Smith?

A. Yes, sir.
[fol. 289] Q. You read that before you signed it, didn't you?
A. Yes, sir.
Q. You read the whole thing before you signed it?
A. Yes.

Q. You didn't swear to something you hadn't read, did you?

A. No, sir.

Q. You thought it was true when you signed it, didn't you?

A. Yes, sir.

Q. I'll ask you, referring to page 4 of that, Paragraph 14 thereof, if you did not swear, "Respondent admits the allegations of Paragraph 18," is that correct?

Mr. Goldthwaite: If Your Honor please, that is just a partial statement from the answer. I ask that Mr. Darby be required to read the entire response to the allegations of Paragraph 18 of the Complaint.

The Court: Where are you?

Mr. Darby: I'm reading right here. "Respondent admits the allegations of Paragraph 18." I don't mind reading the rest of it, Your Honor.

The Court: Well, let's turn the page. You have read all on that page, haven't you?

Mr. Darby: Yes, sir.

The Court: Turn the page.

A. It's a legal matter to me, Your Honor. And, it doesn't mean too much, really. I have to do the best I can.

The Court: It says that you think you had a right to do what you were doing.

A. Yes, sir.

Mr. Darby: You did say, "Respondent admits the allegations of Paragraph 18" is that correct?

A. If you say so.

Q. No, sir. I don't say so. I'm asking you, do you say so?

A. Well –

Q. Did you say so?

A. Like I say, it's a whole lot of legal stuff and I would have to sit down and study it over.

Q. I see.

A. Like I did before.

[fol. 290] Q. You did study it over before you signed it?

A. Yes, I believe I did.

Q. At the time you signed it you were sure at the time that what you were signing was correct, is that right?

A. Yes, sir. If you say so.

Q. Now, were you sure at the time you signed it that it was correct, Mr. Smith?

A. Mr. Darby, if I understood all this legal stuff it wouldn't be costing us thousands of dollars to have to have all this stuff prepared. We would do it ourselves.

Q. Well, is it your testimony that you did not know that what you swore to was correct?

A. I do the best I can to understand it before I sign it. I don't think it's a lie.

Q. Now, do you wish to change what you swore was correct in the answer to the amended bill of complaint now, or are you willing to stick by what you swore was correct originally? Or, do you wish to change it?

A. Well, Mr. Darby, how would I know?

Q. Could I ask the witness to answer the question, Your Honor?

The Court: He says he just doesn't know. He said everything that he understood was correct, but he's not going to—

Mr. Darby: Well, he just testified to the contrary of what he said there, I'm just trying to get him to tell me which he thinks is right now.

Mr. Goldthwaite: Your Honor, we just finished proving by our own witnesses that the allegations of Paragraph 18 of the Respondent's complaint was true.

(Here occurs oral argument of counsel.)

The Court: Can you answer the last question?

A. The last question was, do I wish to change it?

The Court: Yes.

A. No, sir.

Mr. Darby: That's all.

Mr. Goldthwaite: Come down, Mr. Smith.
The Court: Thank you, Mr. Smith.
Mr. Goldthwaite: That is all we have, Your Honor.

(At this point the Court declared a brief recess.)

[fol. 291] (Off the Record discussion.)

Mr. Donald R. Givens, a witness for the Complainant, having first been duly and legally sworn, testified as follows:

On direct examination.

By Mr. Darby:

Q. State your full name please, Mr. Givens.
A. Donald R. Givens.
Q. By whom are you employed?
A. Broadcast Service of Mobile.
Q. And, in what position?
A. General manager.
Q. How long have you been working for them?
A. Since the first part of January, 1963.
Q. Are the books and records of the station kept under your supervision at the present time, those kept in Mobile?
A. Yes, sir.
Q. Are the logs at the station kept under your supervision at the present time?
A. Yes, sir.
Q. Do you have the logs in your possession here in the Courtroom?
A. Yes, sir. They are in the other room.
Q. In the next room. All right.
A. Some of them are.
Q. Are these logs kept day to day in the regular course of business at the station?
A. Yes, sir.
Q. Is it the regular course of business to keep these logs every day?
A. Yes, sir.

Q. Are they made daily by a person or persons under your supervision?

A. Yes, sir.

The Court: What logs are they?

Mr. Darby: What are the logs of?

A. It shows our programming throughout the day on the radio station.

Q. Does it show the names of the various advertisers?

A. Yes, it does.

[fol. 292] Q. Do those logs reflect the names of the persons who advertize over your station and the amount of advertizing purchased?

A. It reflects the number of times they run it, the amount is not reflected.

Q. In what records is the amount—

A. The amount is reflected in our orders that are written at the time of the sale and then our billing.

Q. All right. Now, are you acquainted with an advertizer named Hamm's TV and Appliance Company?

A. Yes, sir.

Q. Have you searched your records to determine when Hamm's TV and Appliance Company advertized over station WSIM?

A. Yes, sir. Several different times. One time he was on in August.

Mr. Pelham: Your Honor please, I'm going to object to this—this gentleman's testimony is he came down here in January, 1963, isn't that your testimony?

A. No, sir. I was made station manager in January, 1963.

Mr. Pelham: You were made station manager. The injunction in this case was issued, I believe, back in September, wasn't it? Of 1962?

The Court: How long have you been with the station?

A. Down here. Since about the 26th of August, 1962.

Mr. Pelham: And, there has been no proof whatever that this gentleman kept the books and records during the period that he claimed damages in his complaint. As a mat-

ter of fact the testimony contradicts that so far. They say that payment checks, what testimony we have had on that point, that payment checks emanating out of Hattiesburg, Mississippi, the home office apparently of this Holt Group. There has been no proof in the record that he kept the books and records that he is apparently fixing to testify to at this time.

Mr. Darby: I would like to re-phrase my question, Your Honor.

The Court: All right.

Mr. Darby: Since you became station manager, has Hamm's TV and Appliance Company advertized over your station?

A. Yes. They have.

Mr. Pelham: Your Honor please. I object to that and move to exclude the evidence. He became station manager [fol. 293] in January of 1963, which was long after the complaint was filed and the injunction was issued by Your Honor in this case, and I submit to you that testimony is incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Pelham: I except. Best evidence rule too, if Your Honor would like to add that as a ground for objection to that testimony.

The Court: Overruled.

Mr. Darby: Would you tell us approximately what period of time Hamm's TV and Appliance Company has advertized over your station since you became station manager?

A. Yes, sir. They have been on the station ever since I have been stationed there.

Q. Do you know whether or not Hamm's TV and Appliance advertizes over any other TV station in Mobile, if you know?

A. It is my understanding they do not.

Mr. Goldthwaite: Object and move it be stricken.

The Court: Sustained, granted.

Mr. Darby: Have you heard any advertizements over any other station of Hamm's TV and Appliance?

Mr. Pelham: I object to that Your Honor. It is immaterial, incompetent and irrelevant. Primarily immaterial whether this gentleman has heard—

The Court: Sustained.

Mr. Darby: I hand you Complainant's Exhibit No. 1 and ask you if—when you first saw the exhibit along with the envelope?

A. It was about the first of April of this year.

Q. And, where was it when you first saw it?

A. Hamm's TV and Appliance store.

Q. What was done with the envelope and exhibit at that time?

A. Paul Hamm handed it to me.

Q. Who is Paul Hamm?

A. He is the owner of that Company, Hamm's TV and Appliance.

Q. Do you know Mr. Bob Williams with the Trane Company?

A. Yes, sir. I do.

Q. Has that Company ever advertized over station WSIM?

A. Yes, sir. It has.

Q. What is the name of the Company?

A. Trane Air Conditioning Company, Incorporated, or something.

[fol. 294] Q. Do you know when it was that Trane Air Conditioning Company, Incorporated first started advertizing over radio station WSIM?

A. Yes, sir. The 23rd day of March.

Q. What year?

A. 1963.

Q. Pursuant to my request, have you checked the books and records of radio station WSIM including the logs for the period of August 10, 1962, to th present time with respect to companies that were advertizing over station WSIM in August at the time the picket line was put up and with respect to those who stopped advertizing during the time the picket line was up?

A. Yes.

Mr. Goldthwaite: Now, if Your Honor please,—I'm sorry, my objection was premature.

Mr. Darby: Did anyone else help you in the making up of that list?

A. Yes, sir.

Q. Who else helped you?

A. Mr. Stan Lightsey.

Q. Was that list made from the books and records of radio station WSIM that are kept here in Mobile, Alabama?

A. Yes, sir.

Q. And, what books and records was it made from?

A. It was made from the logs that we are required to keep for the FCC, it was made from our orders that were written and are kept in our office.

Q. Do you have the orders here with you?

A. No, sir. I don't.

Q. Are the logs that are here on the jury bench?

A. Yes, sir.

Mr. Pelham: Excuse me. I wonder if I could—I didn't hear "list" until you were asking him what he made it from. Did you ask him a question about compiling a list?

Mr. Darby: That is correct.

Mr. Pelham: I thought you asked him did he check all these various documents. Did you ask him this question, "Did you check all them and prepare a list from them?"

The Court: That is substantially what he has asked so far.

Mr. Pelham: I'm sorry. I didn't hear the initial question.

[fol. 295] Mr. Darby: Judge, I'm going to have to get those orders, I thought they were here.

The Court: What are you going to do? Lay a foundation to get that list in evidence?

Mr. Darby: That is correct.

Mr. Goldthwaite: It is going to take quite a bit of foundation—

(Off the record discussion.)

Mr. Darby: Are you acquainted with an account by the Adams Furniture Company of your own personal knowledge?

A. Yes, sir. I am.

Q. Do you know whether or not Adams Furniture Company was advertizing over station WSIM at the commencing—that is, at the time the picket line was placed up by Local 1264?

Mr. Goldthwaite: Your Honor please, I think the log which the witness has testified is a record of every advertizement that is read out over the air on the station and the account book, orders which they have at the station, would more accurately be a record of who was advertizing on the station at any particular time than what the witness recollects. In other words, there is a record of who was doing this advertizing, the orders and the results of the orders, the log. I think that is the highest and best evidence.

The Court: It will be after a point. But, at the moment, I will overrule the objection. Were they advertizing?

A. Yes, sir.

Mr. Darby: Was that advertizing cancelled during the period of time the picket line was up?

A. Yes, sir.

Q. Who cancelled it?

A. Mr. Casey Adams.

Q. Were you present when he cancelled it?

A. No, sir. I was not.

Mr. Goldthwaite: If Your Honor please, I move to strike the previous answer in that apparently he was not present and doesn't know of his own knowledge who cancelled it.

The Court: Motion denied.

Mr. Pelham: I move further to strike that,—

Mr. Darby: I withdraw the question.

Mr. Goldthwaite: All three questions?

[fol. 296] Mr. Darby: If you didn't strike what has already been answered, I think it is a little late. Mr. Givens, as station manager who determines what employees are going to be hired since you have been station manager?

A. I do.

Q. Who determines the rate of pay?

A. I do.

Q. Who determines when they will take a vacation?

A. I do.

Q. Who determines who will get the day off if they get one?

A. Well, an announcer may get it from our program director. Usually it will be cleared through me.

Q. Does either a Mr. Holt or Mr. Lightsey determine who you are going to employ as manager of station WSIM?

Mr. Pelham: Your Honor please, that calls for opinion. This witness can testify as to what Mr. Holt's participation is factually. He's stating his opinion and stating a conclusion when he answers a question whether Mr. Holt determines the decisions made in the management of this station.

The Court: Overruled.

Mr. Pelham: I except.

The Court: Does Mr. Holt determine when a man gets a vacation?

A. No, sir.

Q. Does Mr. Holt determine who you are going to employ?

A. No, sir.

Q. Do you consult Mr. Holt when you desire to employ a person?

A. No, sir.

Q. Do you consult Mr. Holt when you desire to discharge a person?

A. No, sir.

Q. Do you consult Mr. Holt when you determine what you are going to pay?

A. No, sir.

Q. Do you consult Mr. Lightsey on any of those things?

A. About the actual hiring of a person?

Q. Yes, sir.

A. No, sir.

Q. Who is in charge of radio station WSIM and has been [fol. 297] since you have been manager?

Mr. Pelham: I object to that, it calls for a conclusion, Your Honor. An opinion and it is incompetent, irrelevant and immaterial, he has been manager since January, 1963, it has got nothing to do with this law suit.

The Court: Overruled.

A. I am.

Mr. Darby: Do you know who the stockholders are of Broadcast Service of Mobile, Inc.?

A. Who the what, sir?

Q. Who the stockholders—persons who own stock in the corporation?

A. Of my own knowledge I sure don't.

Q. Do you know who the officers of the corporation are?

A. I know that Charlie Holt is President because that is the way it is on the check. I think Bob Robinson is an officer and I am not sure, but I think Stan Lightsey is an officer.

Q. Do you receive any instructions as to day to day operations of this station from Bob Robinson?

A. I—

Mr. Pelham: I object to that, Your Honor. What happened after January, 1963, is not relevant, competent or material in this proceeding.

The Court: Sustained.

Mr. Darby: That's all.

On cross examination.

By Mr. Goldthwaite:

Q. Mr. Givens, how long have you worked at WSIM?

A. Since about the 26th or somewhere along there, August, 1962.

Q. August 23th?

A. Yes.

Q. Where did you work before you came here?

A. I worked for WHHY radio station in Montgomery.

Q. In Montgomery. How long did you work at WHHY?

A. About a month. I started to work on the first day of July, 1962.

Q. Where did you work before that?

A. I was in the Air Force.

[fol. 298] Q. In the Air Force. What was your job at WHHY?

A. I was a salesman.

Q. A salesman. Have you ever been a radio advertising salesman previous to employment by WHHY?

A. No, sir.

Q. How old are you?

A. Twenty-seven.

Q. Twenty-seven. Your first employment in the radio industry was beginning July, 1962?

A. Yes, sir. It was.

Q. Now, by whom were you employed at WHHY?

A. Bob Robinson.

Q. Mr. Robinson is Vice President of WHHY, is he not?

A. I do not know. He employed me as being General Manager.

Q. Did you ever see Charlie Holt at station WHHY?

A. Yes, sir.

Q. How often did you see Charlie while you worked at WHHY?

A. Two times.

Q. Two times?

A. Yes, sir.

Q. You worked there about six weeks?

A. Yes, sir.

Q. Where did you see him when you saw him?

A. The first time I saw him I was in the recording room. And, I was introduced to him and—

Q. Who introduced you?

A. Bob Robinson.

Q. And, Mr. Robinson introduced you, says "Here's Mr. Holt, the President and principal owner of the Company," didn't he?

A. No, sir. He introduced me and he said, "This is Mr. Charlie Holt."

Q. What else did he say?

A. That is about all he said. It was real brief, I was on the telephone.

Q. When he did that you knew who he was talking about, didn't you?

A. Yes, sir.

Q. You knew Mr. Holt was the President of WHHY?

A. No, sir. I did not.

[fol. 299] Q. But, you knew he was the principal owner of the Company?

A. No, sir. I did not.

Q. You knew he was the big boss in WHHY, right?

A. No, sir. I did not.

Q. You didn't. But, you knew who he was?

A. Yes, sir.

Q. Before he was introduced.

A. I had heard of Charlie Holt, yes, sir.

Q. You had heard of him?

A. Yes, sir.

Q. You hadn't heard he was the principal owner?

A. No, sir.

Q. You hadn't heard he was the President of the Company? You hadn't heard he was the big boss?

A. No, sir.

Q. Just what had you heard about him?

A. I just heard about Charlie Holt.

Q. What had you heard about him?

A. I don't remember.

Q. I didn't think you did, you must not have. Do you remember anything you heard about him?

A. I knew he was from Hattiesburg.

Q. Who told you that?

A. I don't remember.

Q. Your pay checks in Montgomery were signed by Mr. Holt, weren't they?

A. I don't remember who signed the checks.

Q. You don't remember?

A. No, sir.

Q. Did you see Mr. Lightsey while you were in Montgomery?

A. No, sir.

Q. You never did see Mr. Lightsey in Montgomery?

A. No, sir.

Q. Now, you worked there about six weeks before you came down here?

A. Yes, sir.

Q. Is that correct?

A. I worked in Montgomery about six weeks, yes, sir.

[fol. 300] Q. And, you worked here from August what—20th?

A. About the 26th.

Q. Twenty-sixth, until the first of January, 1963, a total of three and a half months, approximately—

A. Yes, sir.

Q. —and you were made manager of the station?

A. Yes, sir.

Q. Now, during that period of time, you have learned who Mr. Holt is, haven't you? Since you came here? You have learned more about him?

A. Yes, sir.

Q. He comes down here right often, doesn't he?

A. Yes, sir.

Q. How often has he come in since you became manager on January 1st?

A. I don't know. He is in the Sales and Marketing Executive Club over there and he comes over here to speak.

Q. As speaker?

A. Yes, sir.

Q. How many times?

A. Once or twice.

Q. What is the Sales and Marketing Club?

A. What is it?

Q. Yes. What is it?

A. It is a club for sales and marketing executives of Mobile.

Q. Of Mobile?

A. Yes, sir.

Q. How many times do you know that he has come to that meeting?

A. Once or twice.

Q. Once or twice. How many times in addition to that has he come to the station?

A. I don't know.

Q. Once a week?

A. No, sir. It is not that often.

Q. Once every two weeks?

A. Well, sometimes a couple times a month and sometimes he does not come for a month at a time.

Q. A month at a time. What does he talk to you about [fol. 301] when he comes over? Does he talk to you about sales?

A. Yes, sir.

Q. Does he talk to you about who your salesmen—who you and the other salesmen have been going to see to sell advertising?

A. Yes, sir. In general terms.

Q. Does he talk to you about your sales volume?

A. Yes, sir.

Q. Does he talk to you about your method of selling?

A. Yes, sir.

Q. And, how you interest people in advertising on WSIM?

A. Yes, sir.

Q. In other words, he gives you advice as to how to persuade people to buy advertising time on WSIM?

A. In the light of one salesman to another, yes, sir.

Q. Yes, sir. Now, has Mr. Lightsey been coming over here?

A. Yes, sir.

Q. How often does Mr. Lightsey come over since you have been manager?

A. He's probably been over here about three or four times.

Q. Three or four times. What does he do when he comes over here?

Mr. Darby: I am going to object to any further testimony, Your Honor, on the basis of since he's been manager. I think Your Honor sustained the question that I was asking on that same basis. So, I would think it would not be proper cross, it was ruled out on the basis of their own objection.

The Court: I sustain it.

Mr. Goldthwaite: If Your Honor please, I would like to suggest something. I mentioned this to Mr. Pelham. I stood up at the time Mr. Pelham made his objection and before Your Honor ruled, and I am convinced that objection

ought not to have been made and the inquiry is proper. I think the issue before Your Honor is—

(At this point the Court entertained oral argument of counsel.)

The Court: Well, I have committed myself to this course of ruling. I am going to stay with it. I sustain the objection.

Mr. Goldthwaite: I have to take an exception to that, Your Honor. I think the inquiry of the impact that Mr. Holt's operations of interstate commerce is what this whole [fol. 302] case is about up to the time of the hearing. May I recite you some authority on it?

The Court: Yes, sir.

(Off the Record.)

The Court: What was the question that I would not let you go into?

Mr. Goldthwaite: He asked him that since he became manager had some individual been advertising on the station.

The Court: No. I let him go into that.

Mr. Darby: I didn't ask him anything about money, and I objected to nothing about money. He asked who has been coming down here from Mississippi.

Mr. Goldthwaite: Wait a minute—

(Here occurs further oral argument of counsel.)

The Court: I am going to sustain the objection.

Mr. Pelham: We except.

Mr. Goldthwaite: What is it Your Honor is ruling on? That we may not investigate the ownership and control of the activities of the Company since Mr. Givens became manager?

The Court: That is the way I am going to rule as far as this witness is concerned now. Y'all got me committed to that ruling to begin with and—

Mr. Goldthwaite: If Your Honor please, there is no sense perpetuating error, I don't want any error in this record, I want it right.

The Court: Then, you are going to have to be more careful on the next witness. You got me committed to that ruling, and I am not going to change it at this state. I think it would be unfair to the other witnesses.

(Here occurs further oral argument of counsel.)

The Court: If he goes back into it I'll let you bring it out, but otherwise I am sustaining the objection.

Mr. Goldthwaite: I except, if Your Honor please. Now, Mr. Givens, you testified on direct examination that Mr. Holt is President of Mobile Operations?

A. Broadcast Service of Mobile, Incorporated?

Q. Yes.

A. Yes, sir. That is the way he signs the checks.

Q. And, you testified that Mr. Robinson is an officer of [fol. 303] some kind?

A. Yes, sir.

Q. And, you testified that Mr. Lightsey is an officer also of some kind?

A. Yes, sir. That's right.

Q. You have been manager for three months, is that right?

A. Yes, sir.

Q. Do you know when the—you are not an officer of the Company, are you?

A. No, sir.

Q. Nobody has told you who the stockholders of the Company are?

A. No, sir.

Q. They haven't?

A. No, sir.

Q. You know who they are of your own knowledge having learned it as manager, have you not?

A. I don't know what you mean by that.

Q. Do you know who the stockholders in the Mobile Company are?

A. I don't know all of them.

The Court: Is there serious contention that Mr. Holt is not the boss of at least the Mississippi, the Montgomery and the Mobile station?

Mr. Darby: I think in that language Your Honor, the contention would be that it is not within the decision and orders of the National Labor Relations Board.

The Court: If he does not pull the strings, it is bound to be Mr. Robinson and from what I have heard Mr. Robinson seems to be second in command.

Mr. Goldthwaite: Of these two stations, Your Honor.

Mr. Darby: The question, Your Honor, is not as simple as Mr. Goldthwaite would like for Your Honor to believe with respect to these integrated interprize.—

The Court: If Mr. Holt comes in and tells you to do something, do you do it?

A. Yes, sir.

The Court: And, Mr. Robinson, too?

A. I would do it, I guess.

Mr. Darby: Well, your Honor, I don't think it is a fair question. I'd do what Your Honor would tell me to do if [fol. 304] it was stand on my head, but I don't think Your Honor would tell me to do it.

The Court: I think we are over proving a point. But, you can go ahead and keep proving it, if you wish.

Mr. Goldthwaite: This gentleman testified on direct examination that he's the big boss over here, that he doesn't get instructions from anybody.

The Court: He probably doesn't. He is probably charged with running that station. That makes a lot of sense, they tell him to run it, but I imagine if things don't go well, then they are down here quick.

Mr. Goldthwaite: I think I'm entitled to show on cross examination just how much he does run it and how much help he does get.

The Court: All right. You go ahead then. I don't know what you are proving that hasn't been proven time and time and time again.

Mr. Goldthwaite: I'm just proving this guy is making a misstatement of fact and I think it goes to his credit and Your Honor is entitled to have—

The Court: Well, now, you are not going to impeach him just because you can prove that if they start losing

money Mr. Holt will come in and stand everybody on their head.

Mr. Goldthwaite: I think we can impeach him the way he—the manner in which he made the answer, if Your Honor please.

The Court: Go ahead.

Mr. Pelham: In connection of who owns—the complaint itself alleges the Complainant in this suit owns this radio station in Montgomery.

Mr. Goldthwaite: That's right. It does.

The Court: I think all the evidence has been to that effect, and I think what this witness has said is that he runs that station and that is his job and nobody tells him insofar as details are concerned how to run it, and I don't imagine anybody is going to as long as he's doing a good job of making money, but I imagine if you start losing money then somebody is going to get concerned. Is that about what you said?

Mr. Givens: Do you want me to answer it?

The Court: Yes, sir.

Mr. Givens: Well, sir—

[fol. 305] The Court: Overrule all objections. Give both sides an objection. Go ahead and answer the question.

Mr. Givens: I do the hiring and firing, I don't ask nobody who I hire; who I fire. I do it for the purpose of making money, which I haven't been too successful at for a number of reasons. It's why we are in business. If I have to call Bob or anybody else—if I had to call even you in town here before I did anything, what would they have me there for? And, if things come up I handle them myself—I mean, that is what I'm there for.

The Court: You are not trying to say that your orders cannot be countermanded?

Mr. Givens: No, sir.

The Court: You are just saying that the way things are going now nobody has bothered you. They've told you to run the station.

Mr. Givens: Yes, sir.

The Court: Go ahead.

Mr. Goldthwaite: How often do you talk to Mr. Robinson?

A. Several times a week.
Q. Several times a week?
A. Yes, sir.
Q. Daily?
A. No, sir.
Q. Very nearly every day, right?
A. No, sir. Sometimes I go four or five days without talking to him.
Q. You talk to him several times a week on the average, right?
A. Yes, sir.
Q. Do you file a report with Mr. Lightsey?
A. We file reports to—yes, sir. They go to Mr. Lightsey.
Q. Every day?
A. Yes, sir.
Q. How often do you talk to Mr. Lightsey?
A. You mean other than when he visits?
Q. Yes.
A. Probably since I have been manager—you are talking about on the phone?
Q. Yes.
A. Probably since I have been manager about three times.
[fol. 306] Q. How often does he visit?
A. I think he visits about once a month.
Q. Once a month?
A. Yes, sir.
Q. What does he do when he visits you?
A. Well, he usually will go over the delinquent accounts.
Q. Since you became manager is this corporation had a meeting of its officers and executive board?
A. Not that I know of.
Q. Do you know when it has meetings of the executive board?
A. No, sir. I sure don't.
Q. Sir?
A. No, sir.
Q. You don't know who its officers are for sure, do you?
A. No, sir. Not all of them I don't guess.
Q. Do you know who its stockholders are for sure?
A. No, sir. Not all of them.

Q. You don't know when the annual stockholders' meeting is?

A. No, sir.

Q. You don't really know much about the corporation ownership and control of the corporation, do you, Mr. Givens?

A. I don't guess I do.

Q. What was your volume of sales during March?

A. Sales?

Q. Yes, sir.

A. Or how much rent on the station or how much did we sell?

Q. What was the total sales of advertising during the month of March?

A. I don't know offhand. I could probably find out.

Mr. Darby: May it please the Court. I would object on this ground. This bill of complaint was filed on the particular day, the question is whether the Court has jurisdiction as of that time and the answer of complaint and decrees will be based on what occurred in the complaint at that time. What happened subsequent thereto could not deprive this Court of jurisdiction which it acquired the day this complaint was filed. If the Court had jurisdiction the day the complaint was filed and something happened in the meantime over which the Court had no control and perhaps the party has no control could not retroactively deprive this Court of jurisdiction.

[fol. 307] Mr. Goldthwaite: There is—it is also relevant to another issue, if Your Honor please. They claim damages, and we have shown that this—

The Court: I can agree with that. Are you contesting the other statement?

Mr. Goldthwaite: Yes, sir. I contest that.

The Court: You feel that even though I might have had jurisdiction to begin with—

Mr. Goldthwaite: No, sir. You had no jurisdiction to begin with on account of the chain operation.

The Court: That is not his statement. The statement is that even though I might have had jurisdiction to begin with, you would think that something could happen that could remove my jurisdiction.

Mr. Goldthwaite: The question of your jurisdiction is based on—

(Here occurs oral argument of counsel.)

The Court: The question I asked you is that even though I may have had jurisdiction to begin with, even though I did have it to begin with that things have occurred since then that would relieve me of jurisdiction?

Mr. Goldthwaite: No, sir. Our position is that you didn't have jurisdiction to begin with and that the condition continues to be the same ever since, and I am entitled to show that.

The Court: You will concede though that if I once had jurisdiction I retain it.

Mr. Goldthwaite: I don't concede there is any—does not and will not have jurisdiction of this operation unless Mr. Holt sells all other three stations.

The Court: Well, you just aren't answering my question.

Mr. Goldthwaite: Well, you put it on a predicate on an "if" that I will not concede.

The Court: Well, for the purpose of answering my question you can concede that.

Mr. Goldthwaite: All right. Then, what is your question?

The Court: If I originally had jurisdiction, subsequent developments would not relieve my jurisdiction.

Mr. Goldthwaite: It might. If Your Honor ruled that this—

(Here occurs further oral argument of counsel.)

[fol. 308] The Court: Well, let's get on with the hearing. I think y'all have helped me about as much as you can.

Mr. Goldthwaite: Well, the only thing we are arguing about is relevant that whether this business has attained a rate of—

The Court: I am going to take the position that if I ever once had jurisdiction that I am not going to give it up.

Mr. Goldthwaite: Yes, sir.

The Court: I may get it taken away from me. But, if I conclude that I originally had jurisdiction of this cause then I am going to wind it up. If I conclude that I did not

originally have jurisdiction I will render a decree setting out that is my reason for dissolving the injunction.

Mr. Goldthwaite: Well, would Your Honor let me ask a question so we can make the record on whether or not—what the present volume is?

The Court: Do it speedily.

Mr. Goldthwaite: Yes, sir. I will. What was the total sales in advertising for the month of March, Mr. Givens?

A. You mean the amount or the projective part?

Q. No, sir. I want to know the amount. What was your monthly income from sales during the month of March?

A. We billed out, and this is rough, $5600.00.

Q. During March?

A. Yes, sir.

Q. How about February?

A. About $3,000.00.

Q. How about January?

A. About $2700.00.

Q. Those are the total sales, gross sales for the month of January, February and March?

A. No, sir. You asked about—this is how much rent on our station that we could expect to collect revenue for if everybody would pay us.

Q. That is your total?

A. Yes, sir.

Q. That would be called your gross sales for the month?

A. Yes, sir.

The Court: How much did you really take in?

A. No, sir. Wait a minute. That is not gross sales.

[fol. 309] Q. Well, what is gross—

A. That is gross billing. You sell for say a year, but you can't charge them for it.

Q. Gross billing for the month is what I wanted to know.

A. Yes, sir. That is what it is.

Q. Gross billing. What did you take in?

A. January a little over two, February a little under three, and they haven't paid March yet.

The Court: What is your cut-off with the National Labor Relations Board?

Mr. Darby: $100,000.00.

The Court: Well, there doesn't seem to be much dispute but what this station is under a hundred thousand, the one in Montgomery is over a hundred thousand.

Mr. Goldthwaite: It has got to go up on a chain operation.

The Court: That's right.

Mr. Goldthwaite: The question is is this a chain operation within the meaning of the Labor Board ruling.

Mr. Darby: The Labor Board doesn't have any ruling.

The Court: Well, that much we are all in agreement on. Your Montgomery station is in excess of a hundred thousand if I recall the evidence.

Mr. Darby: Not "my" Montgomery station.

The Court: Well, "the" Montgomery station. The Mobile station does less. Now, that is stipulated to, so let's not—

Mr. Goldthwaite: I think the question is, "should this station be considered in conjunction with the Montgomery station or not".

The Court: That's right.

Mr. Darby: I don't know that that is a stipulation. I was informed by a witness that may or might not now know the right answer. I haven't been informed by anybody that could testify—

The Court: Well, the witnesses that have testified have lead the Court to believe that the Montgomery station has an average income of in excess of $15,000.00 a month.

Mr. Darby: I don't think it was evidence that can be relied on, if Your Honor please, because it was hearsay. But, nonetheless they can so testify.

[fol. 310] Mr. Goldthwaite: Anyhow, it is evidence that Mr. Darby has got to disprove if it's wrong.

The Court: Well, let's go ahead. That is the way the Court feels at this time.

Mr. Goldthwaite: Mr. Givens, I show you a list of people that is headed WSIM advertisers. Would you look at that list, sir. Do you recognize those as companies who have advertised on WSIM?

A. I recognize some of them as having done it.

Q. Which ones? Let me mark this list as an exhibit. This

is a list headed WSIM advertisers which I would like to have marked as Respondent's Exhibit C, for identification.

(Whereupon, said list headed WSIM Advertisers was received and marked for identification, "Respondent's Exhibit C".)

The Court: Before you go into that, what are the names of those two accounts that you said you had. You mentioned two accounts on direct testimony.

Mr. Darby: One was Hamm's and the other was Trane.

A. You mean that got this letter?

The Court: Yes.

A. Yes, sir.

Mr. Goldthwaite: I show you this list on Respondent's Exhibit C and ask you to look at it, please sir. Are there any of those businesses listed on there who were not advertisers over WSIM?

A. Who were not?
Q. Yes.
A. There is a lot on here that I don't recognize.

Mr. Darby: Your Honor, I will object to that on the same grounds with respect to my trying to find out what the witness knew about the advertisers, when they said the records would be the best evidence. Your Honor sustained it and you don't waive the best evidence rule just because you go on cross examination.

Mr. Goldthwaite: To the contrary, Your Honor overruled that objection.

The Court: Overruled. Go ahead.

A. Some of these people as far as I know.
Q. That is not an accurate list of your advertisers?
A. Pardon?
Q. It is not an accurate list of your advertisers?

[fol. 311] Mr. Darby: I think it would only be fair to ask at what time.

Mr. Goldthwaite: Well, I—

A. Now?

Mr. Goldthwaite: No. In August, late August and early September, 1962.

A. Some of these people as far as I know have never been on the station.

Q. All right. Then, it is not an accurate list of your advertisers?

A. No. It is not.

Mr. Darby: Has it been marked?

Mr. Goldthwaite: Yes, sir.

The Court: It is part of the Court record though not in evidence at this time.

Mr. Goldthwaite: I haven't offered it, sir.

The Court: It is not in evidence, but it has been identified.

Mr. Goldthwaite: Yes, sir.

The Court: And, it should remain within the Court until the trial is over in case another witness would like to refer to the same.

Mr. Darby: It is also attached to the sworn pleadings, Your Honor.

Mr. Goldthwaite: Mr. Givens, did Delchamps advertise on this station?

A. Yes, sir.

Q. In August and September?

A. I don't know when Delchamps started. I can look it up.

Q. They started since then?

A. Since when?

Q. Since August and September.

A. I don't know.

Q. But, they do advertise?

A. Yes, sir. They are on the station.

Q. Now, how about Pepsi Cola bottling Company?

A. What about it?

Q. Do they advertise?

A. Now?

Q. Have they since the station started operations?

A. Yes, sir. They were on the station.

[fol. 312] Mr. Goldthwaite: I have no other questions.

Mr. Darby: No questions.

MR. PAUL L. HAMM, a witness for the Complainant, having first been duly and legally sworn, testified as follows:

On direct examination.

By Mr. Darby:

Q. State your name, please, Mr. Hamm.
A. Paul L. Hamm.
Q. What business are you engaged in?
A. T. V. and Appliance business.
Q. Were you advertising over station WAIP before it was sold to WSIM?
A. Yes, sir.
Q. Did you have a contract?
A. Yes, sir.
Q. Did you continue that advertising after station WSIM took over?
A. Yes. I did.
Q. Did you have a conversation with Mr. Hale about whether you would continue your advertising when the current contract ran out?
A. Yes, sir.
Q. Were you going to continue it or not?

Mr. Pelham: I object to that, Your Honor.

Mr. Goldthwaite: Mr. Hale is the manager. If Your Honor please, the statement of the witness' intention would not be proper. It wouldn't seem to me—

The Court: Normally you wouldn't think so. But, how do you prove that a man quit advertising because he got a letter.

Mr. Goldthwaite: I think what they have to do is prove what the man received and what he did after that and let the Court draw its own conclusions as to whether that was the cause after cross examination.

Mr. Darby: I will stipulate with Mr. Goldthwaite that that is correct.

The Court: All right.

Mr. Goldthwaite: We have a right to examine on the thing.

Mr. Darby: We are not through.

The Court: Go ahead. Were you advertising at the station?

A. WAIP or WSIM?

[fol. 313] The Court: WSIM was the successor station.

A. Yes, sir. I don't follow—

The Court: Were you buying time on station WSIM?

A. I was talking to Mr. Hale about time.

The Court: And, you had been advertising in the past?

A. Yes, sir. With WAIP.

Mr. Darby: Mr. Hamm, did you get a letter from Local 1264—

Mr. Goldthwaite: Wait a minute. As I understand the witness' testimony, Your Honor, he never advertised with this employer at all.

Mr. Darby: I don't understand it that way and I doubt if the Court does.

Mr. Goldthwaite: What I'm saying is if he is trying to prove that a company that never contracted with this company got a letter and base damages on it, it is too speculative to recover any damages. He has got to show interference with contracted relationship, a speculation that that is the reason the witness didn't buy advertising is not based on any—

The Court: The question is, "Did you get a letter?" And, I overrule the objection.

Mr. Darby: Did you get a letter from Local 1264, IBEW?

A. Some union, I assume that is the union.

Q. All right, sir. After you got that letter, did you or did you not cancel advertising or request that your advertising on WSIM be cancelled?

A. Yes, sir.

Q. To whom did you make that request?

A. John Hale.

Q. Now, did you after you made that request, also call anyone connected with Local 1264, the union you got the letter from?

A. Yes, sir. I talked to, I believe, it was Mr. Smith.

Q. Mr. Smith. Had his name been signed to the letter?

A. I am sure that is where it was, but I don't remember that letter. I called someone and I am sure I got the name off the letter.

Q. And, you had a conversation with this Mr. Smith?

A. Yes, sir.

Q. Tell us what was said by you and tell us what was said by Mr. Smith.

[fol. 314] A. I had previously been talking to Mr. Hale about time, which they were fulfilling WAIP's contract, and I had talked to him about additional time. When I got the letter it disturbed me for the fact that I was afraid that using that station, it would interfere with my business or that it would get around from one union to the other that we did not patronize union companies. And, that was what we talked about.

Q. Who said that, you or Mr. Smith?

A. I believe, if my memory serves me right, that he emphasized that it could transfer from one union to the other that we were not using union people.

Mr. Goldthwaite: Your Honor please, I object to anything that is not based on the witness' recollection.

The Court: Overruled.

Mr. Goldthwaite: I object to—

The Court: Well, I'll sustain your objection I guess.

Mr. Darby: Would you—

Mr. Goldthwaite: What the witness supposes.

Mr. Darby: Would you tell us what you recall Mr. Smith saying to you in that conversation?

A. That they were not using a union—not electrician—

Q. Technician?

A. I believe it was. And, that they would appreciate using union stations; now, this has been six months ago, sir.

Q. You give us your best recollection.

A. And, emphasized that I should use union stations for the benefit of my business. And, I didn't—I stopped John Hales from running the spots that he was completing for

WAIP in the last fifteen days of the month. And, I didn't use them for a period of time on account of that, then they assured me that all this was over, that things had been worked out and there was no problem as far as using that station any more, so I continued to use it.

Q. You went back on the air sometime later?

A. Yes, sir.

Q. All right. Then, after you went back on the air sometime later, did you get another letter, I'm handing you Complainant's Exhibit No. 1 addressed to Hamm's TV and Appliance Company?

A. Yes, sir.

Q. Did you get this letter through the mail?

[fol. 315] A. Yes, sir.

Q. Did you get it shortly after the date shown on it, March 25, 1963?

A. It has been recently. I don't remember the exact date I got it.

Q. And, this is the letter you got?

A. Yes, sir.

Q. And, what did you do with this letter after you got it?

A. I gave it to—

Q. Do you see him if you don't remember his name?

A. Yes, sir.

Q. The gentleman over here, Mr. Givens?

A. Yes. Don Givens.

Q. You gave it to him?

A. Yes, sir.

Q. And, were you using station WSIM at the time you got this letter dated March 25, 1963?

A. Yes, sir.

Q. Were you using any other radio stations at that time for advertising?

A. No, sir.

Q. Had you ever used any other station other than WSIM for advertising?

A. Not in the past year.

Q. Have you done any newspaper advertising in the past year?

A. Yes, sir.

Q. Had you done any newspaper advertising right before March 25th, 1963?

A. We usually run a couple ads a month in the newspaper.

Q. You haven't been running any advertising with the Downtown Mobile Promotion about March 25th, 1963?

Mr. Goldthwaite: I object to him leading.

The Court: Sustained.

Mr. Darby: Have you been running any advertising in connection with any kind of promotion?

A. No, sir.

Q. Where is your store located?

A. 2055 Government Street at the Loop.

[fol. 316] Did you—would you look at this Respondent's Exhibit B, if you would please, and see whether or not you can identify that letter as one perhaps that you got back in August or September.

A. I believe that is the same letter I got.

Q. Same letter you got. And, it has the name of H. D. Smith, Business Manager on it and a telephone number. Telephone number at the top?

A. Yes, sir. I believe I looked up H. D. Smith and called. If I remember right and found out where he worked and called him there.

Q. WALA?

A. I don't remember. I called his home and asked his wife where to get in touch with him.

Mr. Darby: That is all.

Mr. Goldthwaite: If Your Honor please, I'm going to have to ask the witness to come back in the morning.

The Court: How long do you think your examination will take?

Mr. Goldthwaite: I don't know.

The Court: Try to make it as quick as possible. I hate to make him come back tomorrow.

On cross examination.

By Mr. Goldthwaite:

Q. How long have you been in business in Mobile, Mr. Hamm?

A. Two years.

Q. Two years?

A. Yes, sir.

Q. What is the nature of your business?

A. Selling appliances and televisions.

Q. You sell appliances and televisions?

A. Yes, sir. Retail sales and appliances and televisions.

Q. Do you repair television sets?

A. No, sir.

Q. You don't do any repair work on appliances at all?

A. No, sir.

Q. What brands of appliances do you sell?

A. G.E., Zenith, Amana, and Magic Chef.

Q. Beg your pardon?

A. G.E., Amana, Zenith and Magic Chef.

Q. Where do you get your G.E. appliances from?

A. G.E. Appliances, 217 South Royal Street.

[fol. 317] Q. Do you know where they are made?

A. Yes, sir.

Q. Where are they made?

A. Louisville, Kentucky.

Q. In Louisville, Kentucky?

A. The televisions are in Syracuse, New York.

Q. The televisions are made in Syracuse, New York?

A. Yes, sir.

Q. And, what other items do you sell?

A. Zenith.

Q. Zenith?

A. Yes, sir.

Q. Where are they made?

A. Chicago.

Q. How much do you spend on G. E. appliances from Kentucky every year? What is the purchase—what does that cost you?

Mr. Darby: I submit, Your Honor, that is irrelevant—

Mr. Goldthwaite: Waite a minute—

Mr. Darby: I guess he can ask him what the New York Times said he—

Mr. Goldthwaite: In the case before Judge McCall, the National Labor Relations Board said the impact on commerce, the indirect impact on the customers of radio stations was shown to equal the Board's jurisdictional standards, which is, I believe $50,000,000 import from out of the State in a year, that it would take jurisdiction of Plaintiff's complaint in that case. This case comes under that rule just as well as the other one when you get into this secondary effect of the activities.

Mr. Darby: Id like to say that is the rule that he did not persuade Judge McCall was correct. In the first place, it's a rule he doesn't have—any cases on.

Mr. Goldthwaite: I trust Your Honor will not make the same error Judge McCall made.

Mr. Darby: It is not plead in the first place, and if he wants to raise it, he had better plead it first. That would be my first ground of objection. The second ground for objection, I don't want to take the Court's time up with, under rule 14-C in Acts of Congress, it was designed specifically to grant State Court's jurisdiction where the Supreme Court and the National Relations Labor Board had thrown, [fol. 318] forced employers into an economic no-man's land where they could be chewed up by giant unions. So, that was the purpose, the Board in its discretion by rule or decision or by published rule adopted pursuant to the administrative procedures of that, declined to assert jurisdiction over any labor dispute involving any class or category of employees—

(Here occurs further oral argument of counsel.)

The Court: What do you want to prove by this witness?

Mr. Goldthwaite: I want to prove the allegations of Paragraph eight of our plea to the jurisdiction. "Respondent further shows that such advertisers each purchased directly and indirectly goods which are shipped in interstate commerce and some of such advertisers ship goods and interstate commerce, and combined purchase and

shipments of goods in interstate commerce of such advertisers annually exceed $50,000.00 in value.

Mr. Darby: May it please the Court—

The Court: I am going to let him prove it. I don't know whether I am going to consider it or not. If I decide to consider it I would like it in evidence.

Mr. Darby: We would like to do this, in fact we should have before, we should have moved before we started our testimony to—for the Court to rule particularly on such a plea as that for which he offers no evidence whatsoever. He didn't offer the first—

Mr. Goldthwaite: I don't have to offer it. I can put it on from your evidence if you put it on.

The Court: I am going to let it get into the evidence. Do you know how much you spend with these—

Mr. Goldthwaite: How much do you spend on General Electric appliances—

A. I don't know how much I spend individually, I bought $127,000.00 worth of appliances last year wholesale.

Q. A hundred and twenty-seven dollars—

The Court: All from out of the State?

A. No, sir. It was bought from local distributors.

Q. Were they all manufactured out of the State, Mr. Hamm?

A. Well, sir. That is where the Company is.

Q. You know where they are manufactured, don't you?

A. That is where the Company is.

[fol. 319] Q. And, you know that all these appliances are manufactured outside the State of Alabama that you purchased?

Mr. Darby: I object. We have appliance manufacturers—

A. I know that the manufacturer's home offices are outside the State of Alabama.

Q. You know that these appliances you purchased were manufactured outside of the State also, don't you?

A. No, sir.

Q. Just like you testified before they were manufactured n Kentucky and Chicago and New York.

The Court: He said the home office is there.

A. That's the home offices.

Q. I asked you where these things you purchased were manufactured and you answered my question.

Mr. Darby: I object to that statement.

The Court: Well, now, the Court understands what the witness says. The witness says the home office is there, the factory is there. Do you know whether or not they have factories in Alabama?

A. Not as I know of, no, sir.

The Court: So far as you know they don't have factories in Alabama?

A. No, sir.

The Court: All right.

Mr. Goldthwaite: You don't sell any parts for these appliances?

A. No, sir.

Q. How long have you been advertising over WAIP?

Mr. Darby: May it please the Court. I'd like to point this out to the Court. It's entirely irrelevant the questions he's asking, because the Board's jurisdiction standards for a retail interprize is the sum of $500,000.00 a year. What he's saying and talking about is completely irrelevant.

The Court: I have already stated that I would make up my mind later whether to consider this particular testimony, but I wanted it in evidence in case I decided to consider it. Go ahead, please.

A. What did you ask?

Mr. Goldthwaite: I asked you if you sell any radio or television parts?

A. No, sir.

[fol. 320] Q. When did you start advertising on WAIP?

A. Shortly after I went into business. I advertised with them for about a year.

Q. For about a year?

A. Yes, sir.

Q. Now, did you actually have—had you signed a contract with Mr. Hale for WSIM in August of 1962?

A. My contract at WAIP went from July 15th to August 15th, when WSIM took it over on August 1st, they continued that contract.

Q. Until August 15th?

A. Until August 13th, 14th, and I called him and told him just to drop the rest of the spots.

Q. August 13th you called him?

A. I don't remember the exact date. The day I got the letter.

Q. In other words, your contract with him had two more days to run?

A. In that neighborhood, two or three days.

Q. Now, you had had discussions with him about some other contract?

A. Buying time, yes, sir.

Q. About buying time?

A. Yes, sir.

Q. Had you signed a contract to buy additional time?

A. No, sir.

Q. You had not?

A. No, sir. I had promised him that I would continue to use the station.

Q. But, you had not agreed to buying any additional time at that time?

A. Yes, sir. I had agreed because I had promised him that I would continue to use the station.

Q. What was your conversation with Mr. Hale? Just tell us what it was.

A. That I would continue using the station because WAIP had done me a real good job.

Q. When did you talk to him?

A. Between August 1st and August 10th, 11th.

Q. What happened? Did he come to your place of busi-
[fol. 321] ness or did you call him at the station?

A. He called me.

Q. What did he say? Did he talk to you on the telephone?

A. Told me that they had bought out WAIP, WSIM now, and he wanted to come over and talk to me about continuing to use his station. And, that's what he did.

Q. Did he come over?

A. Yes, sir.

Q. What was the conversation between you?

The Court: Mr. Goldthwaite, I'm going to have to recess. I'm very sorry.

Mr. Goldthwaite: I'm sorry, too. May the witness come back, Judge.

The Court: I don't know. I have just bent over backwards trying to accommodate all the lawyers in this case. I set the case at your convenience, I've done everything I can to get you through this week. I've tried to accommodate the witness, unfortunately we are now going to have to accommodate the Court. We are in this position. You are supposed to be out of town tomorrow?

A. Yes, sir.

The Court: Do you expect your examination to take much longer?

Mr. Goldthwaite: No, sir.

The Court: How much longer?

Mr. Goldthwaite: Five or ten minutes.

The Court: I'll tell you what I'm going to do. I'm going to recess at 5:20. If we reach the point where we cannot accommodate everybody this week, we will just have to go into the trial of the case next week.

Mr. Goldthwaite: Judge, we are just talking about finishing one little witness. Now, I'm sorry he has to go out, but we shouldn't have taken him on if we can't have the right of cross examination.

The Court: I understand. That is why I've been going for fifteen minutes. But, go ahead, see if you can complete it in five minutes.

Mr. Goldthwaite: What happened when Mr. Hale came to your place of business, Mr. Hamm?

A. We got together on a rate of advertising for the continuing month.

[fol. 322] Q. Sir?

A. For the next month.

Q. For the following month?

A. Yes, sir.

Q. You got together on it?

A. Told him I would take it and this and that and the other.

Q. Was he to bring something for you to look at before you signed an agreement?

A. I believe that the reason I didn't sign an agreement was until I got my allocations from my distributor on advertising money to spend.

Q. Until you got your money?

A. No, sir. The allocations for the money.

Q. Until you got the allocation, you didn't know how much you would be able to spend, did you?

A. No, sir.

Q. You never did tell Mr. Hale how much you would spend?

A. No, sir.

Q. You don't know how much you would have spent with him either?

A. No, sir. I had been running in the neighborhood of about a hundred dollars a month; something in that neighborhood.

Q. But, you don't know how much you would have spent if you hadn't cancelled the agreement?

A. I assume I would have continued the same—

Q. You presume it, you don't know, do you?

Mr. Darby: Let the witness.

The Court: No. He doesn't know.

A. How can I know something that I didn't do.

Q. When did you resume advertising?

A. Three or four months later. I assume that is when it was.

Mr. Goldthwaite: That's all, Judge.

The Court: All right. You are excused.

Mr. Darby: May I ask him one question, Judge?

The Court: All right, sir.

On redirect examination.

By Mr. Darby:

Q. Did you—have you done $500,000.00 worth of business during the last year, Mr. Hamm?
A. No, sir.

[fol. 323] Mr. Goldthwaite: If Your Honor please, he testified he bought $127,000.00 worth of merchandise.
Mr. Darby: I asked him one question and he answered it.
The Court: The answer to that was "no". All right. We will recess until 9:30 tomorrow morning, gentlemen.

(Whereupon, the Court recessed for the day and resumed at approximately 9:30 the next day, after which the following occurred:)

Mr. C. S. Lightsey, Jr., a witness for the Complainant, having first been duly and legally sworn, testified as follows:

On direct examination.

By Mr. Darby:

Q. State your full name, please, Mr. Lightsey.
A. C. S. Lightsey, Jr.
Q. By whom are you employed?
A. Air Enterprises, Incorporated.
Q. What is your job with Air Enterprises, Incorporated?
A. Well, I am Vice-President.
Q. Have you any kind of profession?
A. Yes, sir.
Q. What is it?
A. Accounting.
Q. How long have you been in the accounting profession?
A. About nineteen years.
Q. Are you familiar with radio accounting?
A. Yes, sir.
Q. Are you familiar with the various accounting systems required by the Federal Communications Commission?
A. Yes, sir.

Q. How long have you been familiar with those?
A. About fifteen years.
Q. How long have you been employed by Air Enterprises, Incorporated?
A. Approximately seven years.
Q. Are you acquainted with the stock ownership of Air Enterprises, Incorporated?
A. Yes, sir.
Q. Who owns the stock in Air Enterprises, Incorporated?
A. Mr. Charles Holt.
[fol. 324] Q. How much of it does Mr. Charles Holt own?
A. One hundred per cent.
Q. What is the business of Air Enterprises, Incorporated?
A. It is a service organization.
Q. Does it own any shares of stock in any other corporation?
A. No, sir.
Q. Does it own any real estate?
A. No, sir.
Q. What does it own?
A. Some office furniture and an automobile.
Q. All right. And, where is the office of Air Enterprises, Incorporated?
A. Hattiesburg, Mississippi.
Q. And, is it in the same building as any radio station?
A. Yes, sir.
Q. What radio station?
A. WHSY.
Q. What radio stations, if any, does Air Enterprises render a service to?
A. WHSY, Hattiesburg, WHNY, McComb, Mississippi, WHHY, Montgomery, Alabama and WSLM, Prichard, Alabama.
Q. Are you an officer in the corporations that own any of these radio stations?
A. Yes, sir.
Q. What is the name of the corporation, if any, that owns WHSY?
A. Hubb City Broadcasting Company, Incorporated.

Q. Are you familiar with the stockholders of that corporation?

A. Yes, sir.

Q. What are they and how much stock does each own?

A. Mr. Charles Holt owns 51%.

Mr. Goldthwaite: How many?

A. Fifty-one. Mrs. Holt owns 24½%, Mr. Robert N. Robinson owns 24½%.

Q. Who are the officers of the corporation owning and operating WHSY?

A. Mr. Holt is President, Mr. Robinson is Vice President, Mrs. Holt is Secretary, and I'm Treasurer.

Q. What is the name of the corporation that owns WHNY?

A. Broadcast Service, Incorporated.

[fol. 325] Q. What town is it located in?

A. McComb, Mississippi.

Q. Are you familiar with the stock ownership of that corporation?

A. Yes, sir.

Q. What is the stock ownership of that corporation?

A. Mr. Charles Holt owns 60% and Mr. Francis Zachary owns 40.

Q. Are you familiar with the officers of that corporation?

A. Yes, sir.

Q. Who are they?

A. Mr. Charles Holt is President, Mr. Zachary is Vice President, Mrs. Holt is Secretary and I'm Treasurer.

Q. What is the name of the corporation that owns WHHY?

A. Broadcast Service of Montgomery, Incorporated.

Q. Are you familiar with the stock ownership of that corporation?

A. Yes, sir.

Q. What is it? Do you have some notes you took in case—

A. I can't remember the exact percentages.

Q. You can refresh your recollection if you can't remember.

A. I don't have those notes with me.

Mr. Goldthwaite: We have no objection to him refreshing his recollection.

A. I am afraid I don't have those notes with me.

Q. Let's skip that one. Tell us who the officers are.

A. All right.

Q. WHHY, who are the officers?

A. I think I can put my finger on it.

Q. OK.

A. Mr. Holt owns 70% and Mrs. Holt, ten and Robert N. Robinson, twenty.

Q. Who are the officers of that corporation?

A. Mr. Robinson is President, Mrs. Holt is Vice President, Mr. Holt is Secretary and I'm Treasurer.

Q. And, WSIM, what corporation owns and operates that station?

A. Broadcast Service of Mobile, Incorporated.

Q. Who are the stockholders of that station and the percentages. If you need your paper, we'll answer that question later.

A. We may have to do that.

Q. Could you tell us the officers of WSIM?

[fol. 326] A. I can tell you the officers. Mr. Charles Holt is President, Mr. Robinson is Vice President, Mrs. Holt is Secretary and I'm Treasurer.

Q. Who prepares the Federal income tax returns for the four corporations owning the radio stations?

A. I do.

Q. Are they separate or joint returns?

A. They are separate.

Q. With respect to Air Enterprizes, is that separate or joint return?

A. It is separate from all these.

Q. Who prepares the financial reports that are filed with the Federal Communications Commission?

A. I do,

Q. Are they one report or separate reports for each corporation?

A. They are separate.

Q. Who prepares the ownership reports for the corporation for the FCC?

A. I do.

Q. Is it one report or separate reports?

A. Separate reports.

Q. Where are the checks written for the various corporations?

A. Hattiesburg.

Q. Does each corporation have its own bank account?

A. Yes, sir.

Q. Where are the bank accounts for the various corporations located?

A. They are in the cities in which the radio stations operate.

Q. Any of the radio stations of the separate corporations have bank accounts in Hattiesburg other than the Hattiesburg station?

A. Yes, sir.

Q. All of them or just some of them?

A. All of them do.

Q. Who writes the checks on the four corporations?

A. You mean physically?

Q. Yes, sir. Physically.

A. They are written physically in Hattiesburg by my assistant.

Q. All right. And, would that be somebody from Air Enterprizes, Incorporated?

[fol. 327] A. Yes, sir.

Q. Does each corporation have its separate payroll or do the corporations have a joint payroll?

A. They are separate.

Q. Does each corporation file a separate social security tax return or is a joint return filed?

A. Each files separately.

Q. Do the corporations report to any governmental agency as a unit as distinguished from an individual corporation?

A. No, sir.

Q. They are all individual?

A. Yes, sir.

Q. Does each corporation have its own set of books or is there a joint set of books?

A. Each corporation has its own set.

Q. Is there a joint set of books maintained for the four corporations?

A. No, sir.

Q. Does Air Enterprizes purchase the day to day supplies for the operations of any of these stations?

A. No, sir.

Q. How are the supplies purchased?

A. They are purchased by each station manager.

Q. Does each of the stations have its own manager?

A. Yes, sir.

Q. Who is responsible for the day to day operations of each of the stations?

A. Station manager.

Q. Who is responsible for the hiring and firing of employees of each of the stations?

A. Station manager.

Q. Who is responsible for making purchases for each of the stations?

A. Station manager.

Q. How are the bills handled after a purchase is made by the station manager?

A. They are approved by the station manager and forwarded to my office for payment.

Q. Will they then be paid from the bank account of the [fol. 328] particular station?

A. Yes, sir.

Q. Are any payments made to Air Enterprizes for the services performed for particular station?

A. Yes, sir.

Q. And, who makes those payments?

A. I, as Treasurer of the different corporations.

Q. Do the different corporations pay Air Enterprizes for the services performed?

A. Yes, sir.

Q. Is there any standard wage plan for the four stations?

A. No, sir.

Q. Does it vary?

A. Yes, sir.

Q. On what basis does it vary?

A. Local market conditions.

Q. Who is in charge of determining what will be paid a particular employee of a particular station?

A. Station manager.

Q. What is the primary duty of the station manager, or duties of the station manager?

A. Sell advertizing and make money for the corporation.

Q. Is it his job to operate the station?

A. Yes, sir.

Q. Who is responsible for the hiring and firing of the personnel of the various stations?

A. Individual station manager.

Q. Does he have that authority to do that on his own?

A. Yes, sir.

Q. Do they exercise that authority?

A. Yes, sir.

Q. How often do you visit the various stations?

A. Approximately twice a month.

Q. Do you visit some more than others?

A. Yes, sir.

Q. Which ones do you visit the most and which the least?

A. Well, I visit the ones most which mostly need money. One of my duties as Treasurer of each of these corporations [fol. 329] was to see that money on the books are collected.

Q. Do you aid in the collection of monies on the books?

A. Yes, sir.

Q. Do what you can to get it paid?

A. I do what I can.

Q. How often do you go to the station in Montgomery?

A. Approximately quarterly.

Q. How about the one here in Mobile?

A. Twice monthly.

Q. How about the one in McComb?

A. Approximately twice monthly.

Q. How about the one in Hattiesburg, or do you make any notations when you go?

A. Well, it is a separate part of the building.

Q. Your office is separated from the Hattiesburg station?

A. Yes, sir.

Q. In the same building but different offices?

A. Yes, sir. Same building, we are separated by a corridor and a door.

Q. Did you design the system of accounts that is used here in the station in Mobile, Alabama?

A. Yes, sir.

Q. Are you familiar with the system of accounts used in Mobile?

A. Yes, sir.

Q. Is it regular in the course of business for orders to be made out on the sale of advertizing?

A. Yes, sir.

Q. Does that run in the regular course of business?

A. Yes, sir.

Q. Is it a regular record that is kept?

A. Yes, sir.

Q. Have you brought pursuant—have you pursuant to my request recently examined the order book of station WSIM here in Mobile?

A. Yes, sir.

Q. Did you—does the station regularly keep a program log?

A. Yes, sir.

Q. Is that done in the regular course of business?

[fol. 330] A. Yes, sir.

Q. Is it regularly done?

A. Beg your pardon?

Q. Is it regularly done, regularly kept?

A. Yes, sir.

Q. Is it customary to, and do you have a bill that you send out to your advertizers about monthly?

A. Yes, sir.

Q. Is that done in the regular course of business?

A. Yes, sir.

Q. Is it the regular course of business to do it?

A. Yes, sir.

Q. Do you, the station, retain copies of those bills?

A. Yes, sir.

Q. Have you examined those at my request?

A. Yes, sir.

Q. Did you make some notations with respect to your examination of the various documents?

A. Yes, sir.

Q. Without looking at the notations you made, can you remember what the record said?

A. No, sir.

Q. Is the billing sheet made from items put on there showing what was run, made from the program log of the station?

A. Yes, sir.

Q. Is that a record that is regularly kept in the course of business?

A. Yes, sir.

Q. And, it is made, and regularly you keep it that way?

A. Yes, sir.

Q. Those items transferred from the logs to the billing sheets by one of the clerks of the station?

A. Yes, sir.

Q. Is that done daily?

A. Yes, sir. Daily.

Q. May the record show that I have—let me first ask the witness if whether or not these various white papers we have here, this pile about three or four inches high, Broadcast Service of Mobile, are copies of the bills that were sent to the advertizers?

[fol. 331] A. Yes, sir. Those are carbon.

Q. And, do those papers show the day of the month and the number of spots that were on it?

A. Yes, sir.

Q. They also show the price thereof?

A. Yes, sir.

Q. Now, is there any month in which advertising would run, for instance, A B C Television Company, would there be one of these bills showing when it was run in this group of bills?

A. Yes, sir.

Q. In the event there is none for a particular month, would that mean that none was run for that particular account?

A. Yes, sir.

Q. I hand you a folder which has WSIM Radio Sales on it, and ask you to tell us what those documents that are in that folder.

A. Those are air time sales orders that are written by salesmen.

Q. That show when the particular sale is supposed to run on the station and the cost thereof?

A. Yes, sir.

Q. All right. Does it also show where copies of that particular document go?

A. Yes, sir.

Q. Where do they go?

A. White copy, accounting—

The Court: Excuse me.

(Off the Record.)

Mr. Darby: You were telling us where the various copies went.

A. White copy, Accounting.

Q. That would be accounting, where?

A. At the local station, WSIM.

Q. At Mobile?

A. Yes, sir.

Q. All right, sir.

A. Pink copy—

Q. Where would that be?

A. That would be in Mobile.

Q. All rght. And, the yellow copy?

[fol. 332] A. Sales file, that would be in Mobile.

Q. All right. And, the green copy?

A. Green copy goes to Montgomery.

Q. And, to whom does it go there?

A. Mr. Robinson.

Q. What position does he have with the corporation?

A. He is Vice President.

Q. All right. And, the blue copy?

A. Goes to Hattiesburg.

Q. Does it go to your office at Hattiesburg?

A. Yes, sir.

Q. That would be to Air Enterprises, Incorporated?

A. Yes, sir.

Q. Now, did you go through these documents that you just referred to and make a compulation of the stations that were on the air in August and went off the air during the time the picketing was up, that is August of 1962?

A. You said stations.

Q. I mean go through the various books and records and determine the advertisers that were on the air and went off during this period of time?

A. Yes, sir.

Q. All right. Now, I'll ask the Reporter to make as Complainant's Exhibit No. 3, I believe, for identification.

(Whereupon, a list headed "Advertisers Clearing to Advertise on Radio Station WSIM From August ~~10~~, 1962 to September 13, 1962" was received and marked for identification "Complainant's Exhibit 3".)

The Court: Are you preparing to offer that in evidence?

Mr. Goldthwaite: When he does, I want to be heard.

The Court: Well, I understand. Now, that is compiled from the books that are in front of the reporter now?

A. Yes, sir.

The Court: Now, if you are going to offer it in evidence, do you expect to make those records available?

Mr. Darby: Yes, Your Honor, they are available now and that is why we brought them up here.

The Court: Well, not only available now, they can't go over those records in less than half a day, I would say.

[fol. 333] Mr. Darby: They are available to them now and at such other times and places the Court sees fit to allow them to see them, but they want to get them back as soon as they can, but they are available—

A. Yes, sir. Those are our only copies.

Mr. Goldthwaite: If Your Honor please, we are going to—

Mr. Darby: They are not available for making pictures, I don't think; I think they are entitled to look at them. I

don't think they would be entitled to make pictures of our records of our various advertisers.

The Court: Well, why don't we get to the problem. Do you have any other questions you want to ask the witness before you formally offer that?

Mr. Darby: Yes, sir. I want to ask him to identify them and to show how it was compiled. In the first column, is that the name of the advertiser in question?

A. Yes, sir.

Q. And, the next column does it show the amount of the contract that was in existence at that time with that advertiser?

A. Yes, sir.

Q. The next column shows the revenue per week, is that the revenue per week under the contract in existence?

A. Yes, sir.

Q. The next column, does it show the start of the advertising?

A. Yes, sir.

Q. And, will that always be in 1962, it doesn't have a date on it?

A. Yes, sir.

Q. That would be in 1962. And, the next column shows when the particular advertising stopped, is that correct?

A. Yes, sir.

Q. And, the next column, does that show when the advertising returned, if it did?

A. Yes, sir.

Q. And, it didn't return, it shows a "no"?

A. Yes, sir.

Q. And, the next advertising shows "Revenue Lost," and how is that computed?

A. That's deducting the amount which actually ran from [fol. 334] the total amount of the contract as written.

Q. Now, does that—that does not show then the amount of revenue that was lost on these that did not return up to the present time, is that correct?

A. No, sir.

Q. That would be computed by merely extending the figures that you already have?

Mr. Pelham: He's leading the witness, Your Honor.

The Court: Sustained.

Mr. Darby: How would you compute the amount of revenue that was lost from the time the items stopped or re-started to the present time? It's mathematical.

Mr. Goldthwaite: If Your Honor please, I'm going to object to his conclusion on that basis unless it is sustained by the documents. I think that is just a conclusion.

The Court: Overruled.

Mr. Goldthwaite: We except to that, sir.

The Court: All right.

A. Well, it would be computed by multiplying the number of weeks by the revenue per week.

Mr. Goldthwaite: I'm sorry. I misunderstood the question.

Mr. Darby: To find it for any particular day, you would just find the number of weeks and then make the multiplication to the particular date you were seeking, is that correct?

A. Yes, sir.

OFFER IN EVIDENCE

Mr. Darby: I offer Complainant's Exhibit 3 in evidence.

Mr. Goldthwaite: If Your Honor please, we would object. It is my understanding of the rule concerning the introduction of summaries of books and records of a voluminous book and records where the summary is made by an expert who has reviewed books and records, that a notice has to be given in time in advance of the trial of the intention of the party who intends to introduce this thing, that this will be done and an opportunity offered to examine the books prior to the commencement of the trial, otherwise, it would completely burden down a jury and the Court. Now, Mr. Darby comes in here with two stacks of records, one he is talking about now is about five inches thick, and over in front of his desk he has got one about eight inches thick. It would take us, just to go through these and make some kind of sense out of them, two or three days at the best. Now, we are going to object that at this late date

[fol. 335] to introducing any summaries in evidence because it is unduly—

The Court: Well, I'll tell you frankly, I wasn't familiar with the rules Mr. Darby has shown me, but certainly the best rule should be—

Mr. Goldthwaite: Notice has to be given.

The Court: Well, the Court appears to have considerable discretion in the matter. And, I'll tell you quite frankly if this was a jury case where the jury was going to be faced with that immediately, I wouldn't let it in. But, under the circumstances, with the understanding that when this hearing has ended and I take the matter under submission, the attorneys for the Respondent may have the books to examine.

Mr. Goldthwaite: May I make an additional ground, if Your Honor please.

The Court: All right.

Mr. Goldthwaite: That in order for this rule to be applicable, under circumstances where they are offered in the course of trial, it would seem to me to be essential that the books and records be offered in evidence and made a part of the Court's records so that they could be available for the inspection of the Court and use in reaching its decision on the case after the close of the hearing.

The Court: It sure constitutes a tremendous record, doesn't it?

Mr. Goldthwaite: I would say, if that is done it makes a tremendous record, but it is the only way the truth can be put in evidence in order that it can be made fully available to the Court. The Court can't—it either closes a hearing or it keeps it open. And, the only way this can be closed is to put all that stuff in evidence. Just a minute. I may have some other grounds. I want to mention them all. I want to object to the introduction of the exhibit—Complainant's Exhibit 3, on the further ground that there has been no tie in between the asserted revenue lost as contained, as summarized on the exhibit and any activities of the Defendant except in the case of Paul Hamm who was on the witness stand yesterday. And, Your Honor knows what the evidence was in that case.

Mr. Darby: May it please the Court, I think, it was Mr. Goldthwaite's stipulation, and I think if Mr. Goldthwaite will check the attachment to his plea in abatement, he will [fol. 336] find that his clients mailed letters to each of the advertisers on our list, it has been offered as an exhibit and it shall be introduced.

Mr. Goldthwaite: That doesn't mean—not for damages.

The Court: Well, don't get too involved in the prerogative value of it as compared to the admissibility.

Mr. Goldthwaite: I think the basis of our objection is that this testimony ought not to be received in evidence until it is connected up, at least it ought to be subject to be stricken if it is not.

The Court: What do you have to say about all those records. I just hate to see the thing get so expensive.

Mr. Darby: Your Honor, I think the rule is in lieu of the records. If the records had to go into evidence there would be no reason for the rule. The rule is to keep from burdening the Court, to keep from burdening the jury, if there was one, otherwise, you'd have to put the man on the witness stand and he would have to physically go through the records while you watched him, if that's what he wanted to do. They have an opportunity to examine the records. We would suggest that the Court, in giving them an opportunity to examine them, that only their attorneys be allowed to examine them, and they be instructed not to make any lists of them which they would use again to attack our advertisers as this record shows. They have a right to examine them for this purpose but certainly not for the other.

The Court: Well, now, when they start examining them, I'm—how am I going to know what they are going to do with them.

Mr. Darby: Well, Your Honor can give them instructions as an offier of this Court, and one by special admission that they are going to abide by what Your Honor tells them to do.

Mr. Pelham: Well, that is beyond the question now.

Mr. Darby: I have no questions about them abiding by Your Honor's ruling.

The Court: Well, my ruling is going to be that I am not going to admit the other unless you introduce the records.

Mr. Darby: May we have permission to substitute copies?

The Court: Certainly. You will probably have permission to withdraw them unless it becomes apparent they are pertinent—

Mr. Goldthwaite: Yes, sir.

The Court: My real objection is that I just hate to see the record get so expensive because I anticipate that the [fol. 337] matter will be appealed regardless of what the Court rules, and there is just no sense in wasting any more momey on the appeal than is absolutely necessary.

Mr. Darby: May it please the Court, that is one reason for the rule which Your Honor is not following.

The Court: Well, I am not following it.

Mr. Goldthwaite: I think you are, sir.

The Court: Well, go ahead. I have already ruled. I am admitting it in evidence; it is all in evidence.

Mr. Goldthwaite: Have all the records been identified—that has been identified by the witness been incorporated as a part of Complainant's Exhibit 3 by the Court's order?

The Court: I think we will incorporate it all as part of Exhibit 3.

(Whereupon, said list headed "Advertisers Clearing to Advertise on Radio Station WSIM From August 10, 1962 to September 13, 1962" heretofore identified as Complainant's Exhibit 3, and the documents and records pertaining thereto and identified by the witness and discussed at length above and incorporated as one exhibit by the Court, was received and marked in evidence as Complainant's Exhibit 3, the same being impracticable to be included herewith or copied as a part of this transcript, and the same is hereby certified to the Register of the Court.)

The Court: You may go on now.

Mr. Darby: That's all, Your Honor.

On Cross examination.

By Mr. Goldthwaite:

Q. Mr. Lightsey, who owns the building in which WSYN and Air Enterprises, Inc. is located?

A. WHSY?

Q. WHSY owns the building?

A. No. I was asking you—you had the call letters wrong.

Q. The Hattiesburg—WHSY, who owns the building in which Air Enterprises and—

A. Hubb City Broadcasting.

Q. Hubb City Broadcasting owns it?

A. Yes, sir.

Q. Now, that is the Company which operates WHSY?

A. Yes, sir.

Q. Who are the stockholders—oh, you testified to that. Who are the officers in Air Enterprises, Inc.?

[fol. 338] A. Mr. Holt is President, Mr. Robinson and I are vice presidents, Mrs. Holt is Secretary, and I also am Treasurer.

Q. Now, are any of the station managers of the four stations officers in any of the corporations?

A. Yes, sir.

Q. Sir?

A. Yes, sir.

Q. Officers? Other than Mr. Robinson?

A. Other than Mr. Robinson, no.

Q. Who employed the other three station managers?

A. Mr. Holt.

Q. Mr. Holt, employed all three of them.

A. Yes, sir. Let me qualify that. Mr. Robinson hired the station manager for WSIM.

Q. WSIM. Who conferred with Mr. Holt—he conferred with Mr. Holt about that, to your knowledge, did he not?

A. I am sure that he did.

Mr. Darby: I move to strike the witness' answer that he's sure that he did unless he has certain knowledge.

A. I am not sure that he did.

The Court: All right.

Mr. Goldthwaite: It is Mr. Holt's custom to keep up with what is going on in all the stations very carefully, isn't it Mr. Lightsey?

A. Yes, sir.

Q. What other services does Air Services render to these four radio stations?

A. Air Enterprizes?
Q. Air Enterprizes, yes, sir.
A. Accounting and—
Q. Engineering?
A. No engineering.
Q. You don't have an engineer on Air Enterprizes staff?
A. No, sir.
Q. Does one of the four stations have a chief engineer that supervises all four stations?
A. No, sir.
Q. Do you know who employed the engineer at WSIM?
A. No, sir.
[fol. 339] Q. If an employee who was hired by Mr. Robinson—let me withdraw that. A station manager would not have authority to fire an employee who had been hired by Mr. Robinson without first clearing it either with Mr. Robinson or Mr. Holt, would he?

Mr. Darby: Now, I object. That is going on to an assumption. There is no showing in this record that such a thing ever happened, other than the station manager himself. And, he would hardly fire himself.
The Court: Overruled.

A. Would you state that—
Q. I said, a station manager would not have an authority to fire an employee who had been hired by Mr. Robinson without first checking that discharge with Mr. Robinson or with Mr. Holt or with yourself, would he?
A. Yes, sir. He could.
Q. He would.
A. Yes, sir.
Q. Who arranges for the national advertizing contracts with these four stations?
A. Two of the stations have a national representative.
Q. That is a professional advertizing agency?
A. No. Representative.
Q. Not an advertizing agency?
A. Under the broad sense of the word it could be. Advertizing agency as opposed to an advertizing representative is different in the radio business.
Q. One does selling and one does buying, isn't that?

A. Roughly, yes.

Q. Which are the two that have the professionals?

A. WSIM and WHHY.

Q. Who employed—who entered in the contract with this agency?

A. With the representative?

Q. Yes, sir.

A. Mr. Holt.

Q. Now, do the other two stations, McComb and Hattiesburg handle any national advertizing?

A. Yes, sir.

Q. Who procured that advertizing?

[fol. 340] A. Through agencies, there are no representatives.

Q. With whom do they deal?

A. I'm sorry, I don't understand that.

Q. Who on behalf of the station handles those national accounts?

A. Oh, the station manager.

Q. Station manager?

A. Yes, sir.

Q. Mr. Holt doesn't handle it himself?

A. No, sir.

Q. Station managers do not have authority to sign checks, do they?

A. Yes, sir.

Q. Do they?

A. Yes, sir; they—

Q. It is not the practice though for them to do so?

A. Not all do.

Q. Sir?

A. Not all the managers.

Q. Not all the managers do? Only Mr. Robinson does, isn't that correct?

A. No, sir.

Q. One of the others does?

A. Yes, sir.

Q. The Hattiesburg manager?

A. No, sir.

Q. Which one?

A. McComb.

Q. The McComb manager?

A. Yes, sir.

Q. And, that is Mr. Zachary?

A. No, sir. That is Mr. Hines.

Q. One other thing. These FCC financial reports and ownership reports, each station is individually licensed by the FCC, is it not?

A. Yes, sir.

Q. And, the FCC requires each licensee to file an individual financial report?

A. Yes, sir.

Q. And, on the ownership report, it requires it to be [fol. 341] reported, the cross-ownership and interlinking relationship bewteen the stations, does it not?

A. Yes, sir.

Q. What was the average monthly—well, let's don't say it that way. Is your accounting for these four stations on a fiscal year or calendar year basis?

A. It varies.

Q. Varies?

A. Yes, sir.

Q. How about Montgomery?

A. It is fiscal.

Q. Sir?

A. Fiscal.

Q. Fiscal?

A. Yes, sir.

Q. What is its fiscal year?

A. Ends June 30.

Q. Ends June 3rd?

A. Thirty.

Q. Thirty?

A. Thirty.

Q. What was its gross sales for advertizing for the fiscal year ending June 30, 1962?

Mr. Howard: We are going to object to that on the grounds that is not a period that is in issue here, and is for the end of the fiscal period of last year and does not relate to what is going on here or the jurisdiction of the

Court as to some past year. It might be relative to something else, but not to this particular law suit.

The Court: Overruled.

A. Approximately $200,000.00.

Q. Approximately $200,000.00. And, has the monthly rate of sales continued at approximately the same rate since that time?

A. Approximately.

Q. How about Hattiesburg. What is its fiscal year or calendar year?

A. Calendar.

Q. What were its gross sales of advertizing during the calendar year 1962?

A. Approximately $100,000.00.

[fol. 342] Q. Have sales continued at approximately the same monthly rate since the end of 1962?

A. Yes, sir.

Q. How about McComb, sir?

A. What do you want to know?

Q. Is it on a fiscal or calendar year?

A. Calendar.

Q. What were its gross sales during the year 1962?

A. Approximately $100,000.00.

Q. Have they continued at approximately the same rate?

A. Yes, sir.

Q. Do you know what the total sales at WSIM have been during the past six months?

A. Six months?

Q. Yes, sir.

A. Approximately—

Q. What have been the total sales through March, Mr. Lightsey, at WSIM?

A. I don't know, I would think approximately $30,000.00.

Q. Approximately $30,000.00?

A. Yes, sir.

Q. Do you remember—

A. You mean August—

Q. August, September, October, November, December through March. Do you remember the monthly sales figures for WSIM?

A. No, sir.

Mr. Darby: They are in the record.

A. That is a guess.

Mr. Darby: I object to the witness guessing, they are in the record.

Mr. Goldthwaite: No. I think we have plenty information about that already. Air Enterprizes do not service any other radio stations besides these four?

A. No, sir.

Q. Referring to this Exhibit 3, Complainant's Exhibit 3, Mr. Lightsey, for what—what's—how did you compute this Revenue Lost?

A. By deducting the amount that actually ran from the total amount of the contract.

[fol. 343] Q. Contract you are referring to is contract that had previously been signed by the customer?

A. No.

Q. No. What do you mean by the word, "contract"?

A. Oral.

Q. An oral contract?

A. Oral contract.

Q. Is there any memoranda of this oral agreement?

A. The time orders.

Q. Sir?

A. Yes.

Q. The time order?

A. Yes.

Q. Is the time order in this file of records which is a part of Exhibit 3?

A. Yes, I believe. Yes, they are. I want to be sure; I thought they were in there.

Q. Customers are not required to sign a sales agreement before the time is run on the air, Mr. Lightsey?

A. No, sir.

Q. Isn't it—it is not unusual for a customer to cancel a request for spots during the course of a time order, is it?

A. No, sir.

Q. It happens frequently?

A. Yes, sir.

Q. The customer has no obligation normally to pay for time that is not run after it has been written up on a time order, does it?

A. Would you re—

Q. I say, in the trade, a customer is not considered to have any obligation to pay for time that he stops?

A. That he stops, no, sir. It varies in different markets.

Q. In different markets?

A. Yes, sir.

Q. But, in the local market, it is just a week by week proposition, is it not?

A. I really don't know.

Q. You really don't know?

A. No, sir.

[fol. 344] Q. But, you know that is frequently in the local market, a customer change their minds and cancel out time before it has all been run?

A. Yes, sir.

Q. And, it is not the practice for the station to bill them for the unexpired time, is it,

A. It's not our practice.

Q. Not your practice. You don't know of your own knowledge why any of the companies listed on this summary exhibit 3 cancelled their time orders, do you?

Mr. Darby: Objection. Stipulation entered into by counsel.

Mr. Goldthwaite: I—

Mr. Darby: Counsel objected to anybody giving a reason as to why a man that actually did the cancelling—it was stipulated in substance, were they on the air, did they go off and the Court can draw its own conclusions. That is what counsel stipulated to—

Mr. Howard: That is in the record.

Mr. Goldthwaite: We stipulated no such thing.

Mr. Darby: The record shows the stipulation.

The Court: I overrule.

Mr. Goldthwaite: You don't know of your own knowledge why any of these advertizers listed on exhibit 3 cancelled their time?

A. Yes, sir.

Q. You do know of your own knowledge why some of them cancelled their time?

A. Well, one.

Q. One of them talked to you about cancelling their time?

A. Yes, sir.

Q. Which one was that?

A. Adams.

Q. Mr. Adams?

A. Also Mr. Thompson of Cochran Furniture.

Q. Cochran Furniture?

A. Yes, sir.

Mr. Goldthwaite: I think that is all, Your Honor.

On re-direct examination.

By Mr. Darby:

Q. Now, what did Mr. Adams say to you?

[fol. 345] A. He said that he wrote the radio station a letter, and he produced a copy of the letter which indicated that he wished to cancel after thirty days because of the union.

Mr. Pelham: Now, Your Honor, I move to strike the answer. That is hearsay.

Mr. Darby: We just examined him on what he brought out himself.

Mr. Goldthwaite: I didn't ask him what the man told him.

Mr. Darby: You asked him about the conversation as to how he knew it, he is entitled to say how he knew it and what the man told him.

Mr. Pelham: He said he had a conversation and—

The Court: The motion came too late. Motion denied.

Mr. Goldthwaite: Your Honor please, I move to strike the question and answer as being improper.

The Court: You let him ask the question and then you waited until the answer, and then you decided you didn't want it, and you can't do that. Had you objected earlier I would have sustained the objection. But, I am not going to let you gamble on the answer and then decide it is illegal.

Mr. Goldthwaite: I think Your Honor is right in that, but I don't think we were gambling on the answer. I was sitting here studying on another matter when it was asked.

The Court: What was Mr. Pelham doing?

Mr. Goldthwaite: I guess he was studying, too.

The Court: Go on, please.

Mr. Darby: With respect to Cochran Furniture Company, with whom did you talk there?

A. Mr. Thompson.

Q. Would you tell us what Mr. Thompson said:

Mr. Pelham: Object.

Mr. Goldthwaite: Object, if Your Honor please.

The Court: Sustained.

Mr. Darby: Mr. Lightsey, do you know whether WSIM has ever had any national advertising?

A. Not to my knowledge.

Q. It has an advertising rep. but you—he hasn't produced any national advertising?

A. Not to my knowledge.

[fol. 346] Q. Is all of the advertising at WSIM local advertising?

A. Yes, sir. To the best of my knowledge.

Q. Procured by the station locally from people in the local area so far as you know?

A. Yes, sir.

Q. Are any of the stations a member of, the four stations named here, affiliated with any national broadcasting system company that operates throughout the United States?

A. Network?

Q. Yes, sir.

A. Yes, sir.

Q. Which one and what network?

A. WHSY is affiliated with A B C and WHHY is affiliated with N B C.

Q. Now, is there a difference in your accounting and terminology between your billing, your collections and your orders when you sell advertising?

A. I don't understand your question.

Q. Is there a difference? Are the billings the same as the sales, necessarily for the same month? The bills you send out to collect for the advertising you have run or is that necessarily the same as the amount of sales that may have been made that month?

A. Oh, no, sir.

Q. And, also would the billings and the amount of revenue you receive for what you run necessarily be the same?

A. No, sir.

Q. Which is less?

A. The money we receive.

Mr. Goldthwaite: Your Honor please, this seems like to me this is new matters. I don't know what it has to do with—

The Court: Sustained, if you were objecting.

Mr. Goldthwaite: Yes, sir.

Mr. Darby: Your Honor, may we have permission to find that sheet of paper with the station ownership of this particular WSIM down here and put it in evidence?

The Court: Didn't he finally testify to—

Mr. Darby: No, sir. Not on the local. Not on WSIM.

The Court: He never did decide who owns the stock in WS—

[fol. 347] A. I know who owns the stock but I'm afraid to say the exact percentages without reviewing my notes.

Mr. Darby: Let him give us the names if he can now, if he can give us the names then we'll get the percentage. He had it on a piece of paper—

A. I can't find my notes.

The Court: All right. Who are the persons who own the station?

A. Mr. Holt, Mrs. Holt and Mr. Robinson.

Mr. Goldthwaite: Which is the majority owner?

Mr. Darby: He is going to give us the exact figures, if Your Honor please.

Mr. Pelham: We can get it from the Probate Court records. I looked at it yesterday, I don't remember either. It is about the same percentage as that 51, 24½—

Mr. Goldthwaite: I've got it here on a piece of paper.

The Court: We can stipulate it at some other point.

Mr. Goldthwaite: It is similar to the other station.

The Court: Is that all? Well, let the record show that we will stipulate the stock ownership on WSIM as soon as the figures have been obtained. And, that is all you have of this witness?

Mr. Darby: Yes, sir.

The Court: You may step down. All right, gentlemen, we will take about a five minute recess.

(Recess)

Mr. Goldthwaite: The parties have entered into a stipulation that the stock in Broadcast Service of Mobile is distributed as follows: Charles Holt, 55%, Bob Robinson, 30%, Mrs. Charles Holt, 15%.

Mr. Darby: May it please the Court, Complainant would ask the Reporter to mark as Complainant's Exhibit No. 4 the document heretofore marked—

Mr. Goldthwaite: Let's go on and get through with this.

The Court: All he is going to do is offer in evidence a part of the pleadings, isn't he?

Mr. Goldthwaite: It is already in the record as a part of the pleadings and as an admission.

Mr. Darby: It has been identified but not offered. I want to get it in the record at this time if I may, Your Honor.

[fol. 348] Mr. Goldthwaite: We stipulate that is a list of people to whom the letter which is Respondent's Exhibit No.—

Mr. Darby: I won't so stipulate if you are phrasing the stipulation.

Mr. Goldthwaite: That Respondent's—to which Respondent's Exhibit B was mailed which was—

Mr. Darby: I am not going to so stipulate.

The Court: Well, go ahead and offer what you have in evidence.

Mr. Darby: I would rather discuss stipulation off the record, if you don't mind. I don't intend to stipulate—

Mr. Goldthwaite: That has not been identified in evidence as anything, we are just wasting time. Put your witness on and talk about it.

Mr. Darby: If it please the Court, I will go until I hear an objection and the Court rules on it.

The Court: Go ahead, please.

Offer in Evidence

Mr. Darby: I'll ask the Reporter to mark as Complainant's Exhibit No. 4, I believe, for identification the document heretofore marked as Defendant's Exhibit C, and offer it in evidence as an admission that at least these companies named hereon received the document in question, and at least those with an asterisk were called on personally. I don't offer it as that was all that was sent. And, in support of my offer I refer Your Honor to the plea in abatement and the sworn pleadings in this matter hereby under oath the Complainants stated on Page 4 of their original plea in abatement a list of advertisers contacted and attached hereto and made a part hereof as Exhibit 1. I offer that as an admission.

The Court: Well, you offer it and the Court will admit it in evidence for what it is worth.

Mr. Darby: And, may the Court also consider the attachment as shown in the formal pleadings. There is not an extra copy tied to that and I don't have a copy. Let me see if I can find it. May I attach to my exhibit and make a part of it the same attachment in the plea in abatement so it will speak for itself?

The Court: All right. Attach it and offer it all as the same exhibit and let Mr. Boone staple it together. Has it been marked in evidence yet?

Mr. Darby: No, sir. I haven't offered it. I am offering it.

[fol. 349] The Court: All right, it is in evidence.

Clerk's Note

Complainant's Exhibit 4—List of WSIM Advertisers and Letter to Advertisers has been omitted from the record here. Please see side folio 11, printed page 9.

[fol. 351]

OFFERS, DISCUSSION AND READING INTO RECORD EXCERPTS OF MINUTE BOOK OF THE MEETINGS OF THE MEMBERSHIP OF LOCAL 1264

The Court: All right, sir. Let's go on.

Mr. Goldthwaite: If Your Honor please, I have here the minute book which the Complainant subpoenaed, the minute book of the meetings of the membership of Local 1264 and we have agreed to read in evidence excerpts from the minutes which one side or the other wants offered.

The Court: All right. Mr. Howard, offer the parts of the minute book that you consider pertinent, and if you advised the Defendant as to the parts you are going to offer, then, just read them into evidence if there is no objection.

Mr. Goldthwaite: None.

The Court: If there is an objection call his attention, and if anything you haven't called his attention to, call it to him before you start reading it into evidence.

Mr. Howard: All right. Minute date, July 28, 1962, under the heading of "Unfinished Business", the following words appear:

"The Local held a discussion on Fridge's, that is F R I D G E ' S, position at WAIP (WSIM). New owners are taking over on August 1st." Paragraph. "A twenty-five minute discussion followed, concerning the contract at WAIP, and Fridge receiving his termination from Gene Miller, effective July 31, 1962.

Date, August 25, 1962. Heading is "Bills and Communications": "Dave Smith due $6.00 for having had printed five hundred WSIM letters. (Vou. 529)." Paragraph.

"Letter dated 8/15/62 from L.U. 1299 (Montgomery) concerning two employees: A Mr. Stevenson, has been a member since 1948 now R. S.; Earl Bryant, B R Y A N T *has not* been a member five years. Letter signed A. E. Wright, W R I G H T, President, L.U. 1299. Paragraph.

"Brother Burns wrote letter in reply to one from L.U. 1299, explaining situation at WSIM.—Letter (not mailed)

handed to Dave Smith from Bob Robinson in Montgomery, [fol. 352] by Mgt. of WSIM. In this letter, Mr. Robinson requested this Local outline (of contract) for one (their) engineer." Paragraph—

B. A. appointed M. C. Averett, A V E R E T T, Chairman of DEADV. committee. A 15 min. discussion on ways and means of operating in WSIM situation."

"September 29, 1962." Paragraph—

"COMMUNICATIONS & BILLS:

Chas. Waller adv. (Picket signs) (vou. 530) $9.36 Powers Company,—

Mr. Darby: Skip that.

Mr. Howard: "October 27, 1962. After reading and discussing the adopting of a resolution transferring all of the local's funds to an out of state bank." Paragraph—

"Brother Edwards made the following motion: Motion by Edwards to adopt resolution transferring Local's funds—copy of resolution follows—2nd by Vines. Motion passed unan." Paragraph—

"COPY OF RESOLUTION"; Paragraph—

"Resolved, that the President, Secretary-Treasurer, and Business Manager are authorized to establish such checking accounts and savings accounts in banks and federal savings and loan associations in states other than Alabama to be used as depositories of the funds of Local Union 1264, I.B.E.W., as they deem necessary and proper and to immediately transfer all funds of the Local to such accounts. The officers shall continue to account to the members of the Local in the customary manner as to the handling of such funds.

Resolved Further that the President, Secretary-Treasurer and Business Manager are authorized to enter into a trust agreement with Adair, Goldthwaite & Stanford with respect to the transfer of funds to be held by them as Trustee for the purposes of payment of local services and expenses—

Mr. Goldthwaite: Legal services.

Mr. Howard: "—legal services and expenses in the litigation of cases—I don't want to get into another law suit.

Mr. Goldthwaite: Go ahead and read it.

Mr. Darby: Go ahead.

Mr. Howard: "—in the cases of Conwell and Jemison DBA Radio Station WLIQ vs. I.B.E.W., Local 1264, and [fol. 353] Broadcast Service of Mobile, Inc. vs. Local 1264, and for the payment of statements for legal services from such trust fund as the same may be approved from time to time by Local Union membership." Paragraph—

"The trust agreement is to cover such related NLRB proceedings as the Local Union shall authorize." (END) Paragraph—

"Brother Meliska, MELISKA, made motion to sell *all* office equipment to Rekordit of Mobile for the sum of $1.00—2nd by Bellon, BELLON, Passed unanimously."

Mr. Howard: That is it.

Mr. Goldthwaite: If Your Honor please, there are certain other entries that I would like to read it as being necessary to shed light on those which were read by the Complainant.

The Court: Well, I don't want to deny you that right, but you are probably going to wind up putting the Court in such a position that you can't tell whether the whole book needs to go in in order to be fair to all parties.

Mr. Darby: May it please the Court, I think we are in exactly the same position as we were this morning when you took all our records, and we submit the entire book should be made part of the record.

Mr. Goldthwaite: The only ones I want to enter are entries as to payment for legal services which shed light on the transfer of the funds and setting up of a trust fund to Atlanta.

The Court: What is the purpose?

Mr. Goldthwaite: To show the motive of the union in transferring the funds up there.

Mr. Darby: May it please the Court, he's going to try to use a self-serving declaration to show the motive of a group of people. We object, actually, to any reading by the Respondents from its own minutes.

(At this time the Court entertains oral argument of counsel)

The Court: The law is clear that if one side offers part of a conversation or a transaction or a statement or document that the other side is entitled to offer the remainder of it in order to explain it. I am just pointing out to Mr. Goldthwaite that if you start explaining, you are probably going to wind up having to put the whole book in evidence.

Mr. Darby: That is my request, Your Honor. There is no objection to the whole book going in.

[fol. 354] Mr. Goldthwaite: From the minutes of October 27, 1962, under the heading of Communications and Bills—

The Court: Just a moment. Let's preserve Mr. Darby's rights,—are you objecting to this?

Mr. Darby: I am objecting to him putting in parts of his minutes, on the grounds one, that's only part of the minutes, on the second ground, it is a self-serving statement; on the third ground, it has not been shown that these minutes were accurately kept.

Mr. Goldthwaite: You put some in; they were accurate enough that you could use them.

Mr. Darby: It doesn't make any difference—

The Court: I overrule. Go ahead.

Mr. Goldthwaite: "Letter dated October 1, 1962, from Morgan Stanford containing itemized bill for services in the WSIM case, for $808.43."—

Mr. Darby: I further move to strike it on the grounds it is irrelevant.

The Court: Overruled.

Mr. Goldthwaite: From the minutes of November 24, 1962, under the heading, "Communications and Bills: Letter dated 10/30/62 containing bills to Pierre Pelham, WSIM case, $200.00; WLIQ case, $500.00. Total $700.00. Motion by Edwards to pay Pelham, 2nd Bellon, Passed 7-1.

Letter dated 11-6-62, from Adair, Goldthwaite & Stanford containing itemized bill in WLIQ case, total came to $856.15. Motion by Doc Vines to pay attorneys, seconded by Edwards—Carried unanimously."

From the October 27 minutes, following the entry which I read previously from those minutes. "Brother Vines made a motion to pay Stanford for legal services in WSIM case. Seconded by Ted Bellon.—Passed Unanimously."

From the minutes of December 29th, 1962. 'Motion by Meliska that the Treasurer cash the $100.00 in bonds and deposit in the Local's savings account. Seconded by Vines; carried unanimously."

From the minutes of January 26th—excuse me. From the minutes of the February meeting, 1963 held March 2nd, 1963, under the heading "Communications and Bills: Adair, Goldthwaite & Stanford itemized bill, $933.87. Also, letter from Atlanta attorneys, February 14, 1963, ref. to deposit of U. S. Bonds in bank in Atlanta—also enclosed the January statement in WLIQ case. Motion by Smith, sec- [fol. 355] onded by Edwards to pay WLIQ statement. Carried unanimously. Bill from P. Pelham, WLIQ Jan. statement $250.00. Mot. by Edwards, 2nd Meliska to pay Pelham —unan."

"Letter to—" This is from the same minutes. "Letter to Al Hardy, January 16, '63, ref. to seeking aid for our many legal fees in WSIM & WLIQ cases.—no answer yet!"

Under the heading, "New Business" from the same minutes. "Motion by Lowe to transfer $750.00 from Trust fund to checking account—seconded Edwards, passed unan."

From the minutes of March 30, 1963, "Communications and Bills: Letter from Pierre Pelham, containing balance of bill in WLIQ case—$500.00. Motion by Lowe to—"

Mr. Pelham: I would appreciate it if you would not read that into the record.

Mr. Goldthwaite: Yes.

Mr. Darby: I have no objection to leaving that particular part out, Your Honor. We have our objection, I guess, to what else is going on.

Mr. Goldthwaite: From the same minutes under the heading, not under the heading—"Burns reported on his conversations in regards to assistance to our local in meeting legal fees. Burns talked to I. R. Ernie Johnson, who told Burns to call Al Hardy. About two weeks later Burns called Al Hardy, who left impression that aid would come shortly."

Mr. Goldthwaite: That is all.

Mr. Darby: We move to strike, Your Honor, all the readings that Mr. Goldthwaite read into the record, on the grounds that we have assigned before unless Your Honor would rather we assign them again.

The Court: No. I will accept those same grounds, and motion denied.

Mr. Cliff Sizemore, a witness for the Complaint, having first been duly and legally sworn, testified as follows:

On direct examination.

By Mr. Darby:

Mr. Darby: Your Honor, we would request that the minute book be marked as an exhibit and received in evidence in the same manner as the previous document—

The Court: The entire minute book?

[fol. 356] Mr. Darby: Yes, Your Honor. I don't know how you could tear it out, unless they want to tear them out. I wouldn't want to dilapidate the man's book; take it apart and take everything from June 1st to the present time.

Mr. Goldthwaite: Your Honor, the minutes have been made available to any portions they want to read them into evidence.

Mr. Darby: They haven't been made available to me.

Mr. Goldthwaite: Mr. Howard can go through and read any of the other portions he wants in evidence.

Mr. Darby: I think it is most unusual, Your Honor, where it is made available only to part of the counsel representing somebody.

The Court: Well, I am going to accept the book into evidence, but, I would appreciate it if you could limit it to the pertinent meetings.

Mr. Darby: We will be very happy to only request Your Honor to look from June 1 to the present time. We would refer to only what we wanted Your Honor to look at.

The Court: Someone should transcribe those so that copies might be substituted.

Mr. Darby: May we ask the Reporter to transcribe those minutes in the record, if you like, and we would pay the

Reporter for doing it, otherwise I would have to ask to withdraw the book and do it myself.

The Court: All right. We'll do that then, with the understanding that you will pay her for transcribing it. We will let her transcribe the minutes from what date—

Mr. Goldthwaite: June 1—

Mr. Darby: To the present time.

The Court: June 1 to the present time.

COMPLAINANT'S EXHIBIT 5

R. B. T. Local No. 1264

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

(Date) June 30 1962

The Local was called to order at 7:50 P. M., and opened in due form.

....., President, in the forum.

The following pro tem. appointments were made: .....

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[fol. 357]

The official roll call resulted as follows:

President	——	Treasurer	——
Vice President	——	Financial Secretary	——
Recording Secretary	——	Foreman	——
First Inspector	——	Second Inspector	——

Minutes of last meeting were read and approved.

COMMUNICATIONS:

—Bus. Agent Smith read copy of Anderson-Ring bill to members, ref. to all members write their congressman to support bill.

Discussion pro & con followed.

—Letter of appreciation from Aluminum Workers Int'l Union Local 265, 501 Alabama Ave., Sheffield, Ala; ref. $10.00 contribution.

—Motion by Jim Lowe to keep the same two delegates, J. W. Vines & J. C. Burns, to the Mobile Dist. Labor Council, 2nd Fridge; carried.

—Letter from Adair, Goldwaite, & Stanford, Atlanta. ref. WLIQ vs. Local 1264—To Mr. Pierre Pelham, Atty. at Law, Mobile, concerning Vanity Fair Textile Mill strike status, letter dated 6-11-62.

REPORTS:

J. C. Burns stated Mob. Dist. Labor Council went on record to acknowledge Labor's support to Ray Bridges and his election.

—Copy of letter read, which was sent to run-off candidates.

—List of distribution of overtime from WALA read for months of Apr., May & June, and discussion of events happening in office at WALA in effort to get the list. Ten min. discussion followed, then the following motion.

—Motion by Jim Lowe to give WALA-TV three more months to equalize overtime, and if not equalized or ratio is still the same as of this report, B. A. is to go see W. Pape concerning this matter; also B. A. has the authority to see management concerning unequal dist. of O. T. 2nd by Fridge—Passed unan.

—Motion by J. Lowe to include this report of overtime at WALA, for the past 3 mo. in the minutes,—2nd Bellon, Passed Unan.

DISTRIBUTION OF O.T. AT WALA FOR APR., MAY & JUNE, 1962:

—TV—					
Bell	6	Hours	Young	60½	Hours
Taylor	9¼	"	Cowart	58½	"
Ferrell	6¼	"	Reindl	0	"
Hughes	19¼	"	[fol. 358]		
Lowe	3	"	Nations	0	"
Meliska	19¼	"	Rabon	30	"
Clonts	26¼	"	Bellon	16	"
Smith	10½	"	Jackson	40	"
Bedford	19¼	"	Edwards	15¼	"
Mollise	22½	"	—RADIO—		
Vines	17	"	Burns	6	"
			Rutherford	13	"

—Motion by Doug. Rabon that Jim Burns be a delegate to the Radio Progress Meeting in Montreal, Canada in September, 2nd by Bellon; carried 7 to 1, 1 abstention.

WTUF part time man discussion to be on agenda next regular meeting.

Meeting adjourned
9:55 P.M. C. B. Sizemore, RS

R. B. T. Local No. 1264

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

(Date) July 28, 1962

The Local was called to order at 7:42 P.M., and opened in due form.

....., President, in the forum.

The following pro tem. appointments were made: .....

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The official roll call resulted as follows:

President ..... —— Treasurer ..... ——
Vice President ..... —— Financial Secretary ..... ——
Recording Secretary..—— Foreman ..... ——
First Inspector ..... —— Second Inspector ..... ——

Minutes of last meeting were read and approved.

COMMUNICATIONS & BILLS:

A special meeting has been called by the Mob. Dist. Labor Council on July 30th. The meeting is being called for the purpose of selecting candidates for the election in November. On Aug. 10 another meeting has been called to give the results of the selection of candidates.

Letter from I. S. Joseph Keenan, in reference to the importance of voting for candidates friendly to labor.

Letter from L. U. 569, San Diego, Calif. (6-21-62) with ref. to resolution supporting ladies auxillaryes to benefit labor.

Letter to Drew Rutherford (7-12-62) from Int'l Sec. Keenan informing this Local that the credentials for J. C. Burns are not valid. He is not qualified because he does not have 24 months of continued good standing in L. U. 1264.

The Local decided not to send another delegate at this late date to the meeting in Montreal in September.

[fol. 359] Bill due Dave Smith for telephone calls conducting union business, $18.66 (vou. 527) Motion by Burns to pay D. Smith, 2nd by Fridge—Carried.

Unfinished Business—Fridge reported WTUF will have a 1st Class "COMBO" man. Discussion on steps to be taken.

Unfinished Business—The Local held a discussion on Fridge's position at WAIP (WSIM). New owners will take over on August 1st. Motion by Meliska that the Bus. Agent write a reg. letter to manager WTUF, mentioning Section of contract which has reference to part time man, and B. A. request a meeting with Mgt. to discuss this situation. 2nd by Doug Rabon—carried.

A 25 min. discussion followed, concerning the contract at WAIP, and FRIDGE receiving his termination from Gene Miller, effective July 31, 1962.

Letter from Local Lodge 1677, Assoc. of Machinist, Talladega, Ala., requesting financial assistance in their dispute with the Newbury Manufacturing Co.

Motion by Vines to send Local 1677, Assoc. of Mach., Talledega $10.00.—2nd Smith. Carried. (Vou. 528)

Motion by Vines to approve resolution of Local 569, San Diego, Calif., with reference to Women's Auxilliarys.—2nd Smith—Carried.

Adjourned
9:10 P.M.

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..... Local No. .....

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

(Date) August 25 1962

The Local was called to order at 7:45 P.M., and opened in due form.

..... President, in the forum.

The following pro tem. appointments were made: .....

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President .....—— Treasurer .....——
Vice President .....—— Financial Secretary .....——
Recording Secretary..—— Foreman .....——
First Inspector .....—— Second Inspector .....——

Minutes of last meeting were read and approved.

BILLS & COMMUNICATIONS:

FRANK ENDS ....'fflh8 .....

[fol. 360] Dave Smith due $6.00 for having had printed 500 WSIM letters. (Vou.529)

—Letter, dated Aug. 16, 1962, sent to I. Sec. Keenan at I.O. in ref. to Burns as delegate to International Convention.

—Rec. Letter with form LM-3 to report Financial status of L. U.

Letter concerning Ala. Labor Council Meeting to be held Oct. 29-31, in Montgomery.

Report of B. A. concerning Floyd at WMOZ. Dave Smith said he talked to Mr. Estes, owner, and was told Floyd wanted a vacation in addition to a 6 mo. leave of absence to go to school, and who now teaches at Trade School. Minutes of 3 Exec. Bd. meetings read.

Letter, Dated 8-15-62 from L. U. 1299 (Montgomery) concerning 2 employees: A Mr. Stevenson, has been a member since 1948; now R. S.; Earl Bryant has *not* been member 5 yrs. Letter signed A. F. Wright, Pres. L U 1299. Bro. Burns wrote letter in reply to one from L. U. 1299, explaining situation at WSIM.

—Letter (not mailed) handed to Dave Smith from Bob Robinson in Montgomery, by Mgt. WSIM. In this letter Mr. Robinson requested this Local outline (of contract) for one (their) engineer.

Unfinished Business:

Burns requested secret ballot to comply with request of I. O. in selection of delegate to the Int. Convention.

Motion by Bellon; in order to comply with regulations, a secret ballot be taken concerning sending delegate to Int'l. Convention. 2nd by Fridge—Carried 8-0 (1 abstain)

THE VOTE:

For J. Burns to be delegate to Int'l Convention.
Yes 9—No 0.

B. A. appointed M. C. Averett, Chairman of DE-ADV. Committee. A 15 min. discussion on ways and means of operating in WSIM situation

NEW BUSINESS:

Concerning delegate to Ala. Labor Council meeting to be held in Montgomery Oct. 29-30. Mot. by Fridge that Vines represent this L.U. as delegate. 2nd Burns; Passed 8-0 (1 abstain)

NEW BUSINESS: Members of WALA-TV report that [fol. 361] the Company has purchased a new type rear-

screen projector (name Cell-o-matic?) and will be delivered about 9/5/62. Tech. have not been consulted concerning it's use or jurisdiction. Non-tech. employees have already been assigned to operate this equipment.

Meeting adjourned
9:25 P.M. CBS.

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R. B. T. Local No. 1264

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

(Date) September 29 1962

The Local was called to order at 7:50 P.M., and opened in due form.

..... President, in the forum.

The following pro tem. appointments were made: .....

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The official roll call resulted as follows:

President	——	Treasurer	——
Vice President	——	Financial Secretary	——
Recording Secretary	——	Foreman	——
First Inspector	——	Second Inspector	——

Minutes of last meeting were read and approved.

COMMUNICATIONS & BILLS:

—Chas. Waller adv. (Picket signs) (vou. 530)	$ 9.36
—Powers Co. (1,000 envelopes) (vou. 531)	14.04
—J. Burns for phone call to Atlanta (concerning convention) (vou. 532)	1.65
—D. Smith for 2 phone calls to Atlanta (atty. Adair & Goldwaithe) (vou. 533)	9.96
—S. Ferrel Photography (Pictures WSIM signs) (Vou. 534)	11.44

Motion by Doug Rabon pay all above mentioned bills. 2nd by Dave Fridge.—Mot. carried unan.

Letter to our attorney in Atlanta with copy of WSIM injunction, along with request for advice as to our next move.

—Letter from Adair's office advising us that he has filed an appeal with N.L.R.B., in New Orleans, and stating we have a good chance of winning the appeal of the WSIM case.

Prop. for membership—none.

REPORT OF DELEGATES & COMMITTEES:

[fol. 362] Bro. Vines reported attending the NLRB hearing on Sept. 19th, in Room 103 of the Federal Bldg., at which meeting the "WLIQ Union" sought a certification.

Letter from P. Pelham, dated Aug. 29th advising this Local that Judge McCall had set a tentative date of Oct. 29th to hear the appeal of WLIQ case.

No report of accidents, sickness or death of any of our members.

Roll call—11 members present.

No unfinished business or new business.

Adjourned 9:15 P.M.

* * *

..... Local No. .....

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

(Date) October 27 1962

The Local was called to order at 7:50 P.M., and opened in due form.

.....President in the forum.

The following pro tem. appointments were made: .....

The official roll call resulted as follows:

President	——	Treasurer	——
Vice President	——	Financial Secretary	——
Recording Secretary	——	Foreman	——
First Inspector	——	Second Inspector	——

Minutes of last meeting were read and approved.

COMMUNICATIONS & BILLS:

Letter, dated Oct. 1, 1962 from Morgan Stanford containing itemized bill for services in the WSIM case, for $808.43. (vou. 536)

Bro. Vines made motion to pay Stanford for legal services in WSIM case. Seconded by Ted Bellon.—Passed Unan.

After reading & discussing the adoption of a resolution transferring all of the local's funds to an out of state bank: Bro. Edwards made the following motion:- Motion by Edwards to adopt resolution transferring Local's funds—copy of resolution follows—2nd by Vines. Motion passed unan.

"COPY OF RESOLUTION"

"Resolved, that the President, Secretary-Treasurer, and Business Manager are authorized to establish such checking [fol. 363] accounts and savings accounts in banks and federal savings and loan associations in states other than Alabama to be used as depositories of the funds of Local Union 1264 I.B.E.W., as they deem necessary and proper and to immediately transfer all funds of the Local to such accounts. The officers shall continue to account to the members of the Local in the customary manner as to the handling of such funds.

Resolved Further that the President, Secretary-Treasurer and Business Manager are authorized to enter into a trust agreement with Adair, Goldthwaite & Stanford

with respect to the transfer of funds to be held by them as Trustee for the purposes of payment of legal services and expenses in the litigation of cases of Conwell and Jemison DBA Radio Station WLIQ v. I.B.E.W., Local 1264, and Broadcast Service of Mobile, Inc. v. Local 1264, and for the payment of statements for legal services from such trust fund as the same may be approved from time to time by Local Union membership.

The trust agreement is to cover such related NLRB proceedings as the Local Union shall authorize." (END)

Bro. Meliska made motion to sell *ALL* office equipment to Rekordit of Mobile for the sum of $1.00—2nd by Bellon Passed unan. List of office equipment sold to Rekordite

1 adding machine

2 typewriters

1 ditto machine

8 tables

12 chairs

1 window fan

1 address-o-graph

1 electric heater

1 filing cabinet

Local acknowledges receipt of check for the above listed items of $1.00 from Rekordit of Mobile (Check #83)

REPORT OF DELEGATES:

Bro. Vines reported attending the meeting of Young Democrats Fri. Oct. 26. Bro. Vines reported he had a fine seafood dinner, and heard speeches from 8 congressmen & one senator. Fine time had by all. Letter from Local to Mob. Dist. Labor Council was read. Letter advised use of Channel 5 by political candidtes is neither condemned or [fol. 364] condoned by this Local, since Channel 10 is not selling program time to politicians during Oct. & Nov.

Channel 10 is selling only 1 min. announcements during this time because of a survey.

Adjourned 9:00 P.M.

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..... Local No. .....

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

(Date) November 24 1962

The Local was called to order at 7:45 P.M., and opened in due form.

.....President, in the forum.

The following pro tem. apointments were made: .....

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.....

The official roll call resulted as follows:

President	——	Treasurer	——
Vice President	——	Financial Secretary	——
Recording Secretary	——	Foreman	——
First Inspector	——	Second Inspector	——

Minutes of last meeting were read and approved.

COMMUNICATIONS & BILLS:

Letter, dated 10-30-62,—containing bills to Pierre Pelham:

WSIM case—200.00
WLIQ case—500.00

Total $700.00 (vou. 537)

Mot. by Edwards to pay Pelham, 2nd Bellon, Passed 7-1

Letter, dated 11-6-62, from Adair, Goldwaithe, & Stanford containing itemized bill in WLIQ case, total came to $856.15 (vou. 538)

Motion by Doc Vines to pay Atlanta attorney's, 2nd by Edwards—Carried unan.

Letter from Adair, Goldwaithe & Stanford concerning their receiving monies from banks which was deposited in Atlanta bank in L.U. account. Copy of letter from Adair, Goldwaithe & Stanford to the Atlanta bank instructing them on printing of checks with name—L.U. 1264, IBEW.

REPORT OF DELEGATES:

Doc Vines informed by Susie Kuffskie, Sec. of M.D.L.C., urging individuals to oppose the "City Income Tax". Doc [fol. 365] also reported Susie Kuffskie, had received a letter dated 10/25 from "AFTRA" concerning the case of WLIQ vs. L U 1264. They saw the case dismissed; they desired information on the "WLIQ Local Union". (It is know as "Federation of Licensed Broadcast Employees")

NEW BUSINESS:

Motion by Loe, that Treasurer be allowed to put in petty cash, all cash money received from Financial Secretary—to pay rent, and office supply bills—when it accumulates to $50.00. 2nd by Edwards—Carried unan.

Letter from L.U. 265, Sheffield—appeal for funds in their strike which has been going on for 47 weeks, by 100% of their members. No action taken.

NEW BUSINESS: Wire of Nov. 21 to B. A. from L. Wimberly concerning our acceptance or rejection of the new R.C.A. contract proposal. (Wimberly assistant to I. Pres.) —Motion by Brassell to accept contract proposal—2nd by Elkins—Passed unan.

Report by Brassell: About 2 wks. ago G. R. Burnett gave Brassell notice of termination at R.C.A. Service because of his application at B.A.F.B.—Discussion followed. Brassell to talk to R.C.A. Ser. Monday.

Adjourned

9:15 P.M.

..... Local No. .....

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

(Date) December 29 1962

The Local was called to order at 7:45 P.M., and opened in due form.

.....President, in the forum.

The following pro tem. appointments were made:.....

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The official roll call resulted as follows:

President	——	Treasurer	——
Vice President	——	Financial Secretary	——
Recording Secretary	——	Foreman	——
First Inspector	——	Second Inspector	——

Minutes of last meeting were read and approved.

BILLS & COMMUNICATIONS:

—Due D. Smith 3 phones pertaining to Local's business—[fol. 366] $22.45 (vou. 539)

Motion by Lowe to pay Smith for phone calls. 2nd by Vines—Carried unan.

—Letter from Attorneys Adair, Goldthwaite & Stanford, dated Dec. 19, 1962—Annual retainer fee—$200.00. Motion by Meliska to pay attorney's annual retainer fee of $200.00; 2nd by Vines—Carried (vou. 540)

BUSINESS AGENTS REPORT:

—Brassell of R.C.A. Service has now gone back to work; no time lost.

Discussion of WLIQ case.

—Letter to W.B. Pape, Mgr. WALA-TV; dated Dec. 18 read to membership, letter had reference to the new equip-

ment WALA TV has acquired, called "Cellomatic". (Aprojector). In this letter the mgr. was informed that we feel this equipment comes under our jurisdiction.

The Local has been informed by the U.S. Gov't that we have four $25.00 Savings Bonds which have matured.

Motion by Meliska that the Treasurer cash the $100.00 in bonds and deposit in the Local's savings account. Seconded by Vines; carried unan.

A Report from Jim Lowe; in which he stated the building we are presently occupying was supposed to be torn down in approx. 60 days.

Meeting adjourned
8:20 P.M. CBS

..... Local No. .....

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS

(Date) January 26, 1963

The Local was called to order at 7:45 P.M., and opened in due form.

..... President, in the forum.

The following pro tem. appointments were made: .....

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The official roll call resulted as follows:

President	——	Treasurer	——
Vice President	——	Financial Secretary	——
Recording Secretary	——	Foreman	——
First Inspector	——	Second Inspector	——

[fol. 367] Minutes of last meeting were read and approved.

BILLS & COMMUNICATIONS:

Letter from Alabama State Assoc. of Electrical Workers —notice of affiliation dues—$10.00 plus 5¢ for each member.—signed A. J. Strong, Sec.

Letter from Gordon Freeman, I.O., Dated 12-31-62, pertaining to laison of each L.U. & ~~cope~~ informing members of registration & voting.

Minge Floral Co., Inc.—$14.78 (vou. 541)
(flowers, funeral of Sam Ferrel's father)

Mot. by Vines, 2nd Bellon to pay—Passed unan.

—Due Jim Lowe, phone call atty. in Atlanta $1.54

Mot. by Burns, 2nd Vines to pay—Passed unan. (vou. 542)

Letter, 1-15-63, to Ch. Engr. R. Hurley (WALA-TV-AM) read by Smith, in reference to grievance procedure in contract. This letter pertains to "Cellomatic" at WALA-TV.

—Discussion of activity concerning incidents happening at WALA-TV in ref. to "Cellomatic".

Report concerning tardiness of Fin. Sec. turning over dues money to Treasurer. (last rec. was Octobers)

No new business or unfinished business.

Motion to adjourn.—

8:24 P.M.
CBS

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..... Local No. .....

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

(Date) February Meeting 1963

Held March 2, 1963

The Local was called to order at 7:45 P.M., and opened in due form.

....., President in the forum.

The following pro tem. appointments were made: .....

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The official roll call resulted as follows:

[fol. 368]

President	——	Treasurer	——
Vice President	——	Financial Secretary	——
Recording Secretary	——	Foreman	——
First Inspector	——	Second Inspector	——

Minutes of last meeting were read and approved.

COMMUNICATIONS & BILLS:

Powers Co. (2 reams ditto paper) 3.64 (vou. 543) Mot. by Lowe, 2nd Edwards to pay—Unan.

Adair, Goldthwaite & Stanford (itemized bill) 933.87 (vou. 546)

Letter from Atlanta attorney's, 2-14-63, ref. to deposit of U.S. Bonds in bank in Atlanta—also enclosed the January statement in WLIQ case.—

Mot. by Smith, 2nd by Edwards to pay WLIQ statement. Carried unan.

Bill From P. Pelham, WLIQ Jan. statement $250.00 (vou. 545)

Mot. by Edwards, 2nd Meliska to pay Pelham—unan.

Letter from A. R. Meadows, Supt. Education, reference to future education needs.

Letter from C.O.P.E.—reference to conference to be held in Gatlinburg, Tenn.—March 6, 7.

Letter from Trade & Industrial Ed., 2/8/63, reference to 13th annual education workers inst. to be held on Dauphin Island May 5-10.

Voucher for office supplies to be ordered from I.O.

Mot. by Meliska, 2nd by Smith to permit Treasurer to order supplies from the I.O., costing $11.75—carried (vou. 544)

Letter to Al Hardy, 1-16-63, ref. to seeking aid for our many legal fees in WSIM & WLIQ cases.—no answer yet! Smith reported there would be a hearing Monday Mar. 4, 1963 at 9:30 A.M. (Declar. Judgment)

NEW BUSINESS:

Motion by Lowe to transfer $750.00 from Trust fund to checking account—2nd Edwards, passed unan.

Note from Rutherford (F.S.)

Members needing reinstatement:
Averett
Rabon, W.R.

Members dropped:
[fol. 369] Fridge
Reindl

Adjourned 8:45 P.M.
CBS

..... Local No. .....

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

(Date) March 30 1963

The Local was called to order at 7:45 P.M., and opened in due form.

..... President, in the forum.

The following pro tem. appointments were made: .....

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The official roll call resulted as follows:

President .....——	Treasurer .....——
Vice President .....——	Financial Secretary .....——
Recording Secretary..——	Foreman .....——
First Inspector .....——	Second Inspector .....——

Minutes of last meeting were read and approved.

COMMUNICATIONS & BILLS:

Due Dave Smith (phone call to Wash., D. C.) $1.92 (vou. 547)

Motion by Vines, 2nd by Burns to pay Smith—unan.

Letter from Pierre Pelham, containing balance of bill in WLIQ case—$500.00.

Motion by Lowe to table bill until further evidence of improvement of Pelham's cooperation in comparison to that presented in past; seconded by Burns. Motion passed—4 for, 2 against.

Motion by Lowe, seconded by Burns, to allow Ray Harper, an employee of R.C.A. Ser. & Future Member to sit in on this meeting—Passed unan.

Letter—3/25/63—in reference to Ala. Edu. Institute, meeting to be held on Dauphin Is. and a maximum of 4 delegates. —Meeting will be held May 5-10.

Letter from R.C.A., as a reminder they sent a copy of Gov't orders in reference to Government contracts, where there shall not be any discrimination because of race or creed. Letter from R.C.A. with reference to the pre-payment plan —which has been complied with.

[fol. 370] Copy of letter read, dated 3-22-63 to Mr. Minow, of F.C.C. from I.O. (Freeman) with reference to good relations between L.U. & Papo Radio & T.V. Co. for past 20 years.

Burns reported on his conversations in regards to assistance to our local in meeting legal fees. Burns talked to I.R. Ernie Johnson, who told Burns to call Al Hardy. About two weeks later Burns called Al Hardy, who left impression that aid would come shortly.

Copy of letter read (3-26-63) from Goldthwaite—to Willis requesting information on transcript and inquiry if our case (WSIM) was on register of Judge Hocklander for April 8th.

Copy of letter read (3-26-63) from Goldthwaite—to Willis Darby, ref. to "Cellomatic" grievance at Chan. 10, and selection of arbitrators.

FIRST READING—application of Floyd Ray Harper, employee of R.C.A. Service.

No unfinished business—

Adjourned
8:50 P.M.

On Direct examination of Mr. Cliff Sizemore.

By Mr. Darby:

Q. Mr. Sizemore, are you one of the officers of 1264?
A. Yes, sir.
Q. What is your position with them?
A. Recording Secretary.
Q. By whom are you employed?
A. By radio station WTUF.
Q. In what position?
A. Chief Engineer.

Q. How many engineers do you have at radio station WTUF?

A. One.

Q. Is that including yourself as Chief Engineer or do you have one under you?

A. Including me.

Q. What hours is WTUF on the air?

A. Daylight hours, it varies.

Q. Is that from sun up to sundown?

[fol. 371] A. Right.

Q. Anywhere from about—

A. Five til seven is the maximum time during the summer time.

Q. And, during the winter time, about how many hours a day is it on the air? Is five to seven as long as you stay—

A. A couple of months during the summer—then, the minimum time during the months of November and December is about 6:45 to 5:00 P.M.

Q. I take it you are not there during the whole time the station is on the air?

A. No, sir.

Q. Do you know Al Hardy?

A. Not personally.

Q. Who is Al Hardy?

A. I can't recall his title, I know he is with the radio section of the I.B.E.W.

Q. He is one of the international officials of the I.B.E.W., is he not?

A. As far as I know.

Q. Has his office in Washington, D. C.?

A. Right.

Q. Has the international union contributed any funds to the local in connection with the dispute with WSIM so far?

A. No. Not to my knowledge.

Q. How much money did the Local union have in the bank here in Mobile when it was transferred its money to Georgia?

A. Does that pertain to the case?

Mr. Goldthwaite: Go ahead and answer it if you know, Cliff.

A. Our total money, you are talking about? What the Union had?

Q. At that time.

A. I can't recall exactly, but I would say in the neighborhood of possibly $7,000.00.

Q. What is the name of the company that you sold all your office and other furniture equipment to? Do you recall the name?

A. Yes.

Q. What is its name?

A. It is Rekordit, R E K O R D I T, Rekordit of Mobile.

Q. Is that a corporation?

[fol. 372] A. I believe it is.

Q. Who are the officers of that corporation?

A. I couldn't tell you all the officers.

Q. Well, tell us the ones you know.

A. I know Jimmy Lowe, Dave Smith are in it, and Watson Vines.

Q. Are they engaged in the repair of television sets, is that the corporation's main business?

A. No. I believe it is recording.

Q. They record?

A. I believe that is the main business.

Q. They record?

A. Anything that anybody would want to record, like musical and so forth.

Q. Those gentlemen operate that business on their own?

A. That's right.

Q. Does that business have a contract with the I.B.E.W.?

A. Not that I know of.

Q. You don't know what kind of wages they pay?

The Court: Would you indulge the Court just a minute?

Mr. Darby: Mr. Vines, is he a member of 1264?

A. Yes, sir. He is.

Q. And, the other man connected with Rekordit—

A. Yes, sir. They are.

Q. This Ernie Johnson, who is he?

A. He is an international representative.

Q. Does Mr. Ernie Johnson attend any of these meetings that you had recorded in your minute book where radio station WSIM was discussed?

A. No, sir. I haven't seen him in a couple of years. I think it has been about two years.

Q. Didn't you see him down here at the Courthouse, the time in the Courthouse that Judge McCall was trying a WLIQ case?

A. I did not attend that trial.

Q. Was it reported to you at the union meeting that Mr. Ernie Johnson was here?

A. I don't recall.

Q. You don't recall. Well, you do know he was here during that trial?

A. No, sir. I don't.

[fol. 373] Q. You have not been told that by anybody?

A. No, sir.

Q. And, it was not reported at a union meeting?

A. It possibly was and maybe not been put in the minutes. I don't recall.

Q. It's your testimony that Ernie Johnson didn't attend any of the meetings that you attended within the last two years?

A. I have been to most of the meetings, and Ernie Johnson was not there.

Q. Do you recall—is Ernie Johnson an international representative making his office in Birmingham, Alabama?

A. I don't know where he makes his office.

Q. You know as a matter of fact that sometime when the local has negotiations, that Mr. Ernie Johnson will come to town and help them in their negotiations, do you not?

A. That's right.

Q. He helped in the negotiations with the last contract with WALA TV did he not?

A. I believe that is the last one.

Q. You don't know—does your local union make any reports to the national union?

A. Only reports they make as I know of is the financial, about turning in their dues.

Q. Does your business manager make any kind of report with respect to strikes or picket lines and things of that type?

A. Yes—we get permission from them; they sanction it.

Q. Did you obtain—do you know whether you obtained permission prior to the time the picket lines were put up in connection with WSIM when these letters were sent out?

A. I can't recall it. I would have to consult the minutes.

Q. Sir?

A. I can't recall. I assume we did.

Q. It would be in the normal course of your operation to obtain the sanction of the international union?

A. That's right.

Q. And, so far as you know, the international union would have been aware of the activities that you had in connection with WSIM, is that correct?

[fol. 374] A. Yes, sir. I'm sure they are aware of it.

Q. It is a matter of policy with the local union and the international to keep international fully informed of what the local is doing, is that correct?

A. Yes, sir.

Q. As a matter of fact, your attorneys over in Atlanta, Georgia, represent the International Union, do they not? Do you know that?

A. No, sir. I don't know that.

Q. Do you know whether or not the International Union has been paying part of any of your attorneys expenses directly, as distinguished from through Local 1264?

A. I have heard nothing about it.

Q. At this meeting in which you sold—you did sell your physical, personal property to this corporation at one of these meetings in that resolution, isn't that correct? To Rekordit?

A. That's right.

Q. At that meeting, was any reason discussed as to why it was necessary to sell the physical, personal property to the corporation controlled by some of your members?

A. Yes, they did. But, I didn't understand all I heard about it.

Q. Tell us what you recall having been said in connection with selling your physical, personal property to the corporation controlled by three of your members for one dollar.

A. So that we would not own it.

Q. Why didn't you want to own it?

A. So that if we—possibly a law suit could get our property.

Q. That was the same reason you transferred your funds, was it not?

A. I would assume so.

Mr. Darby: That's all. Counsel has given me another question, Your Honor, may I ask it?

The Court: Yes, sir.

Mr. Darby: Where is the property that you sold to Rekordit?

A. It is in the building at 301 Church Street.

Q. Does Rekordit occupy that building?

A. Yes, sir.

Q. Is it in the area occupied by Rekordit or is it in the [fol. 375] area occupied by the Local Union?

A. Well, there are several rooms, and we have one and they have another.

Q. Where is the furniture, in their room or your room?

A. In our room.

Q. In other words, the local has continued in possession of the furniture in its own room since they sold it to Rekordit, is that correct?

A. That is correct.

Mr. Darby: That's all.

On cross examination.

By Mr. Goldthwaite:

Q. Mr. Sizemore, you only get permission of the International Union or sanction of the International Union for strikes or picket lines when you want them to pay the expenses of the strike or picket line, isn't that correct?

A. I don't know. I am not familiar with that.

Q. You don't really know whether you get the sanction of the International Union before you have a strike or picket line or not, do you?

A. No, sir. That is the reason I'm—I'm just the Recording Secretary.

Q. Yes, sir. You do know that the International hasn't paid anything in connection with the WSIM case or the WLIQ case, don't you?

Mr. Darby: Objection. It has not been shown it would be within his knowledge, Your Honor.

Mr. Goldthwaite: If he doesn't know, he can say he doesn't.

The Court: Overruled.

A. No, sir. I do not know that.

Q. You do not know it. Now, you say approximately $7,000.00 was transferred to Atlanta?

A. That's right. That is the approximate figure.

Q. All that money was transferred into the trust fund for the payment of legal fees, was it not?

A. That's right.

Q. None of it was put in a bank at the time it was transferred, aside from that that was transferred to the trust fund? In other words, all the money was transferred to [fol. 376] the trust fund for the payment of legal fees?

A. That's right. All of it was in the trust fund.

Q. At the time that was done, it was discussed that Local Union contemplated that one or both of the WLIQ or the WSIM cases might have to be taken all the way to the United States Supreme Court—

Mr. Darby: I object, unless it is shown who discussed it.

Mr. Goldthwaite: In a meeting wasn't it discussed?

A. Yes, it was.

Q. And, it was discussed that you wanted to be sure you had the money available and not get it tied up in any way so that you could prosecute these legal remedies, wasn't it?

Mr. Darby: May it please the Court, an officer of the Union has admitted that they disposed of money so that it would not be subject to the payment of any judgments that were rendered against it. Now, he is trying to get around the admission made by the office on the stand and we submit that is not appropriate. He admitted it, he can't get around it. We object to the question.

The Court: Overruled.

A. Would you state the question again, please?

Q. At the time it was discussed, the reason you were transferring it was to avoid the money necessary for these legal expenses getting tied up in any manner, was it not?

A. Yes. That is correct.

Mr. Goldthwaite: I think that is all.

On redirect examination.

By Mr. Darby:

Q. Does Local 1264 continue to collect dues from its members?

A. Yes, sir.

Q. What is done with those funds as they are collected?

A. You mean, where does it go?

Q. Yes. What do you do with it when you collect?

A. Well, we have a Treasurer who deposits it in the bank.

Q. The bank in Mobile?

A. No. In Atlanta.

Q. You deposit the funds as they come in into an Atlanta bank?

A. That's right.

Q. Now, who can write checks on the bank in Atlanta?

A. Who can write checks in Atlanta?

[fol. 377] Q. Who can write checks on the bank in Atlanta without regard to where the person may be who writes them?

A. Our President and Business Agent.

Q. Mr. Smith can write a check on the Atlanta Bank, is that correct? He is your Business Agent?

A. That's right. He is our Business Agent.

Q. And, the President has to sign with him?

A. They are counter-signed checks, that's right.

Q. Is it also true that in order to pay Mr. Goldthwaite his bill, the Business Agent and the President here have to write a check on the Atlanta Bank?

A. I may have to re-tract that statement. Because, I don't think that the President and the Business Agent—the Treasurer has to sign it. I left that part out.

Q. All right. Those checks are signed here to, are they not? For the payment of your attorneys in Atlanta?

A. Yes, sir.

Q. The money is in a bank account in Atlanta?

A. I assume—As far as I know, that is correct.

Q. What bank is it in?

A. I don't know.

Q. Who would know?

A. I imagine Mr. Smith or Goldthwaite.

Q. Now, you are acquainted with the fact, are you not, that certain payments have been made for postage and the printing of other envelopes and messages since you transferred these funds to the Atlanta bank, are you not?

A. Yes, sir.

Q. And, those funds—those expenses have been paid, have they not, by check written here in Mobile on the Atlanta bank?

A. Frankly, I couldn't tell you how they were paid.

Q. That was the only source you had to get the money, was it not? The money in the Atlanta bank?

A. That is where our money is.

Q. Yes, sir. And, the bills are paid as they come in, are they not?

A. They are paid. That's right.

Q. Now, this trust agreement—does the Local have some [fol. 378] written trust agreement with someone in Atlanta in connection with this money in the Atlanta bank?

A. I would assume.

Q. You haven't seen an agreement?

A. No, sir.

Q. For all you know personally, the money is just in an Atlanta bank, and the Business Agent and the Treasurer write checks on it from Mobile?

A. That's right.

Q. Mr. Goldthwaite can't draw that money out without somebody from Mobile signing the checks, can he? To your knowledge?

A. No, sir. I don't believe he can.

Mr. Darby: That's all.

On Re-cross examination.

By Mr. Goldthwaite:

Q. Mr. Sizemore, have you ever seen the bank book of the Local Union?

A. I could see it, but I never have looked at it.

Q. Do you know whether or not they still have an account in the First National Bank of Mobile?—as well as one in an Atlanta bank?

A. To actually have seen it, no.

Q. You don't know whether they do or don't?

A. No.

Q. Do you know what the procedure is for the payment of a statement for legal services out of this trust fund that was set up?

A. In the meeting we vote on it, and I write a voucher for that amount and give it the Treasurer and he takes it from there.

Q. And he takes it from there?

A. Uh-huh.

Q. Do you know what procedure he goes through to get the money out of the trust fund in order to pay the lawyers?

A. No, sir.

Q. No. You don't know whether the trust fund is separate from the general funds from the Local at all, do you?

Mr. Darby: May it please the Court. I am going to object to him assuming that there is a trust fund. Because, there is no evidence that there is a trust fund. There was a resolution passed to create a trust fund, but whether or not one was ever created, the record does not show. This [fol. 379] witness says he has seen no such instrument. Mr. Goldthwaite is assuming that the trust fund that the Union voted on has been actually created. There is no evidence here that it has.

The Court: Overruled.

Mr. Goldthwaite: Do you know—

A. Would you re-state the question, please?

Q. Do you know that in order to pay the legal services out of the Atlanta bank, the Treasurer sends a letter authorizing funds to be withdrawn from a separate trust fund and put in the Atlanta checking account?

A. Yes, sir.

Q. You know that is the procedure that is followed?

A. Yes. Generally.

Q. A letter is written to the Trustee to withdraw funds to cover the check, is that right?

A. Yes, sir.

Mr. Goldthwaite: I don't think of anything else. I have no further questions.

The Court: You may step down.

Mr. Darby: We rest, Your Honor.

The Court: Rebuttal?

Mr. Goldthwaite: If Your Honor please, I'd like to move to strike—

Mr. Darby: If you have a motion to strike, I think it should properly come before I rest. I submit that the motion to strike is out of order.

The Court: I have discretion.

Mr. Goldthwaite: All you did was rest at this point. I move to strike from Complainant's Exhibit 3, which is a list of advertisers, what number is that—I wish to strike from Complainant's Exhibit 3, the entry, Baxter, with reference to Baxter's $44.00, $36.00, 8/15, 9/2, 10/18, $66.60 on the basis there has been nothing in evidence to connect that with any actions on the part of the Respondent.

Mr. Darby: May I be heard on that, Your Honor?

The Court: Denied.

Mr. Goldthwaite: Sir?

The Court: Denied.

Mr. Goldthwaite: I make the same motion with reference [fol. 380] to Christian Book Store, and the following entries; Citronelle Timber and the following entries; Cochran Furniture and the following entries; Coleman Furniture and the following entries; Delaney's and the following entries; Rev. G. W. DeLotte and the following entries; Rev. James Foster and the following entries; Elwood T. Hogan

and the following entries; Long's Grocery and the following entries; W. T. Pierce and the following entries; Prichard Camera and the following entries; Prichard and the following entries; Prichard Trading Post and the following entries; Ten Pen Grill and the following entries. The motion being that there has been no evidence which is sufficient to show that those asserted losses were proximately caused by any action on the part of the Defendant.

The Court: All right. You are making your motion separately and severally?

Mr. Goldthwaite: As to each one, yes, sir.

The Court: All right. The Court separately and severally denies them.

Mr. Goldthwaite: All right, sir. I make the same motion with regard to Adams Furniture Company and the following entries.

The Court: Denied.

Mr. Goldthwaite: And, Paul Hamm and the following entries.

The Court: Denied. Rebuttal?

Mr. Goldthwaite: We have none.

The Court: All right. The Court will take it under submission.

Mr. Goldthwaite: Will you allow us an exception to the rulings on those motions to strike?

The Court: Certainly. Let the record show the exception comes before the Court takes it under submission. The Court now has the case under submission.

[fol. 381] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 382]

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

REGISTER'S CERTIFICATE RE COMPLAINANT'S EXHIBIT 3

STATE OF ALABAMA
COUNTY OF MOBILE

I, W. ELSWORTH HAUGHTON, Register of the Circuit Court of Mobile County, Alabama, do hereby certify that Complainant's Exhibit 3, a list headed "Advertizers Clearing to Advertize on Radio Station WSIM from August 10, 1962 to September 13, 1962", and the documents and records pertaining thereto and incorporated as one exhibit by the Court, introduced in evidence in Case No. 58,568-H, styled BROADCAST SERVICE OF MOBILE, INC. vs. LOCAL 1264 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, WILLIAM RAYBURN, DAVID FRIDGE AND H. D. SMITH, has been certified by the Court Reporter herein on Page 337 of this transcript that same is impracticable to be included or copied as a part of this transcript.

As this Complainant's Exhibit 3 is too large and bulky to attach hereto or include in the transcript, it is being sent separately to the Supreme Court of Alabama.

WITNESS my hand and the Official Seal of said Court this 7th day of August, 1963.

/s/ W. ELSWORTH HAUGHTON
W. Elsworth Haughton, Register,
Circuit Court, Mobile County,
Alabama.

(Seal)

COUNSEL'S NOTE:

COMPLAINANT'S EXHIBIT 3—Physical exhibit omitted from certified record as unessential.

[fol. 384]

IN THE CIRCUIT COURT OF MOBILE COUNTY
STATE OF ALABAMA

MINUTE ENTRY OF ORDER OF SUBMISSION
—Dated, April 11th, 1963

This cause being regularly set down for hearing is submitted for decree on the pleadings and the testimony as heard in open Court.

IN THE CIRCUIT COURT OF MOBILE COUNTY
STATE OF ALABAMA

ORDER GRANTING MOTION TO DISSOLVE TEMPORARY INJUNCTION AND DISMISSING CAUSE—May, 23, 1963

This cause being regularly set down for hearing and being submitted for decree on the pleadings and testimony as heard in open Court and the Court having duly considered the same is of the opinion that the motion to dissolve the temporary injunction should be granted on the grounds that the Court's jurisdiction was preempted by the National Labor Relations Act.

It is, therefore, Ordered, Adjudged and Decreed by the Court that the motion to dissolve the temporary injunction heretofore issued in this cause be, and the same hereby is, granted, and said injunction be, and hereby is, dissolved.

It is further Ordered and Decreed by the Court that the relief as prayed for in the Bill of Complaint as amended be, and hereby is, denied, and that the Complainant be, and hereby is, taxed with the costs of this cause, for which let execution issue.

Dated, May 23rd, 1963

Joseph M. Hocklander, Judge.

IN THE CIRCUIT COURT OF MOBILE COUNTY
STATE OF ALABAMA

NOTICE OF APPEAL AND SECURITY FOR COSTS

Comes Broadcast Service of Mobile, Inc., an Alabama corporation, and hereby gives notice of appeal from the decree of this Court dissolving temporary injunction and dismissing cause to the Supreme Court of the State of Alabama.

Kilborn, Darby and Kilborn, By Willis C. Darby, [fol. 385] Jr.; Stone and Howard, By Ralph O. Howard, Attorneys for Complainant.

We hereby acknowledge ourselves securities for costs for the foregoing appeal.

Principal
Broadcast Service of Mobile, Inc., By Ralph O. Howard, As its Attorney,

Surety
Maryland Casualty Company, By Banks Griffith, Jr., Attorney-In-Fact.

(Corporate Seal)

Bond on appeal approved and filed May 29, 1963 (omitted in printing).

[fol. 387]

[File endorsement omitted]

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

MOTION TO SET INJUNCTION BOND ON APPEAL
—filed May 29, 1963

Come Broadcast Service of Mobile, Inc., a complainant, and moves the Court for an order prescribing the condition and penalty of a bond for reinstatement of injunction pending appeal and review by the Supreme Court of Alabama of the order of this court dissolving temporary injunction and dismissing the cause dated May 23, 1963.

Dated at Mobile, Alabama, this 29 day of May, 1963.

Kilborn, Darby and Kilborn, By Willis C. Darby, Jr.; Stone and Howard, By R. O. Howard, Attorneys for Complainant.

Certificate of service (omitted in printing).

[fol. 388] Citation on appeal and return of service (omitted in printing).

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

DECREE REINSTATING INJUNCTION PENDING APPEAL
—May 30, 1963

This cause coming on to be heard is submitted for decree upon motion of complainant for an order prescribing the condition and penalty of a bond for reinstatement of injunction pending appeal and review by the Supreme Court.

The Court having considered and understood said motion is of the opinion that the injunction granted in the decree heretofore rendered in this cause on the 13th day of Sep- [fol. 389] tember, 1962, should be reinstated and remain in full force and effect pending the appeal and review of the cause by the Supreme Court of Alabama, which said appeal was taken by complainant on the 29th day of May, 1963, from the decree entered in this cause on the 23rd day of May, 1963, dissolving the temporary injunction provided in the aforesaid decree dated the 13th day of September, 1962, provided complainant files a bond as hereinafter provided. It is therefore,

Ordered, Adjudged and Decreed by the Court as follows:

That the injunction provided in the decree rendered in this cause on the 13th day of September, 1962, be and is hereby reinstated and restored in all respects and shall remain in full force and effect pending said appeal of this cause, provided the complainants shall within fourteen (14) days from the date of this decree file with the Register of this Court a bond in the amount of Two Thousand Dollars ($2,000.00) with good and sufficient surety, to be approved by the Register of this Court, conditioned upon the payment of all damages and costs which the respondents, Local 1264, International Brotherhood of Electrical Workers, and William Rayburn, David Fridge and H. D. Smith, shall sustain by the said reinstatement and restoration of said injunction and by its remaining in full force and effect pending said appeal, if said injunction is dissolved in whole or in part.

Done and Ordered this the 30th day of May, 1963.

Joseph M. Hocklander, Circuit Judge, in Equity Sitting.

Injunction Bond for $2000.00 approved and filed June 4, 1963 (omitted in printing).

[fol. 394]

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

ORDER—June 4, 1963

It appearing to the court that complainant has given bond as provided by the decree of this court dated the 30th day of May, 1963, and that said bond has been approved by the Register,

It is Ordered, Adjudged and Decreed by the Court that the Register cause a copy of the reinstated injunction to be served on each of the respondents in this cause.

Done and Ordered this 4th day of June, 1963.

Joseph M. Hocklander, Circuit Judge in Equity Sitting.

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

In Equity

WRIT OF INJUNCTION—June 4, 1963

To Any Sheriff of the State of Alabama—Greeting:

We Command You, That, without delay, you execute this writ, and due return thereof how you have executed the same make to us.

To Local 1264, International Brotherhood of Electrical Workers, an unincorporated association, its officers, agents, servants, pickets, members, and employees, and William Rayburn, David Fridge and H. D. Smith, and all persons in active concert and participation with you.

Whereas Broadcast Service of Mobile, Inc., filed their Bill of Complaint in said Court against Local 1264, International Brotherhood of Electrical Workers, and William Rayburn, David Fridge and H. D. Smith, praying among other things, that Local 1264, International Brotherhood of Electrical Workers, an unincorporated association, its officers, agents, servants, pickets, members and employees, and William Rayburn, David Fridge, and H. D. Smith, and all persons in active concert and participation with them, be enjoined from picketing complainant and from engaging in other acts more fully set forth in the Bill of Complaint.

And Whereas, after a hearing upon notice before the Hon. Joseph M. Hocklander on the 10th day of September, 1962, A. D., he did order, adjudge, and decree said relief as prayed for, and whereas, on to-wit May 23, 1963 [fol. 395] said Hon. Joseph M. Hocklander did order, adjudge and decree that the motion of said respondents to dissolve the temporary injunction heretofore issued in this cause, and the same was granted, and said injunction was dissolved.

And Whereas, on, to-wit, May 29, 1963, complainant in the above styled cause did give notice of appeal and file security for costs in said appeal and did file a motion to reinstate the temporary injunction pending the outcome of the appeal and said motion was set down for hearing and was heard on, to-wit, Thursday, May 30, 1963.

And Whereas, after a hearing upon notice before the Hon. Joseph M. Hocklander on the 30th day of May, 1963, A. D., he did order that the injunction provided in the decree rendered in this cause on the 13th day of September, 1962, be and is hereby reinstated and restored in all respects and shall remain in full force and effect pending said appeal of this cause, provided the complainants shall within fourteen (14) days from the date of this decree file with the Register of this Court a bond in the amount of Two Thousand and 00/100 ($2,000.00) Dollars with good and sufficient surety, to be approved by the Register of this Court, conditioned according to law;

And Whereas, bond has been given and approved as required by said order.

And Whereas, on the 4th day of June, 1963, the Honorable Joseph M. Hocklander did order the Register to issue the injunction provided in the decree rendered in this cause on the 13th day of September, 1962.

These, therefore, are to Command and Strictly Enjoin you and each of you from:

(a) Picketing in front of or in the vicinity of complainant's offices and transmitter located in Prichard, Alabama;

(b) Causing or attempting to cause persons doing business with or persons desiring to do business with complainant to cease or refrain from doing business with complainant;

(c) Inducing any person that is a party to an agreement with complainant to breach said agreement;

(d) In any manner conspiring, campaigning, confederating, agreeing and arranging with any person to inter-
[fol. 396] fere with, hinder or annoy any person who may desire to do business with complainant until the appeal of this cause has been heard and decided by the Supreme Court of Alabama or until the further orders of this Court. And this you will no wise omit under penalty, etc.

Witness W. Elsworth Haughton, Register of the Circuit Court of Mobile County, Alabama, Equity Side, this 4th day of June, 1963, A. D.

W. Elsworth Haughton, Register of the Circuit Court of Mobile County, Alabama.

Sheriff Return (omitted in printing).

Petition to Extend Time for Filing Transcript and Order Granting Same (omitted in printing).

[fol. 398] Certificate of the Register (omitted in printing).

[fol. 399] Certificate of Appeal—Filed May 30, 1963 (omitted in printing).

[fol. 401] [Stamp—Filed—July 30, 1963—Supreme Court of Alabama—J. Render Thomas, Clerk]

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

In Equity

No. 58, 568-H

BROADCAST SERVICE OF MOBILE, INC., Complainant,

vs.

LOCAL 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AND WILLIAM RAYBURN, DAVID FRIDGE AND H. D. SMITH, Respondents.

SUPREME COURT—RE:

1st Div. No. 163

MOBILE CIRCUIT COURT

In Equity

BROADCAST SERVICE OF MOBILE, INC., Appellant,

vs.

LOCAL 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AND WILLIAM RAYBURN, DAVID FRIDGE AND H. D. SMITH, Appellees.

PETITION TO EXTEND TIME FOR FILING TRANSCRIPT—
Filed July 26, 1963

To the Honorable Joseph M. Hocklander, Circuit Judge for the Thirteenth Judicial Circuit of Alabama (Mobile County, Alabama), and Trial Judge of the Above Styled Cause:

Broadcast Service of Mobile, Inc., pursuant to the Revised Rules of the Supreme Court of Alabama, February 1, 1955, particularly Rule 37 presents its petition for a thirty day extension of time for preparing and filing the transcript of record in the above styled cause on appeal to the Supreme Court of this State.

The returnable date is now July 29, 1963, but due to the fact that the transcript of testimony of the Court Reporter was not filed in this cause until July 24, 1963, thirty days extension of time until August 28, 1963, is necessary for the filing of the Register's transcript in the Supreme Court of Alabama.

Wherefore, petitioner prays that upon consideration of this petition that the relief sought be granted.

Respectfully submitted,

Kilborn, Darby & Kilborn, By Willis C. Darby, Jr.,
[fol. 402] 307 First National Bank Bldg., Mobile, Alabama.

[File endorsement omitted]

ORDER EXTENDING TIME FOR FILING TRANSCRIPT—July 26, 1963

This cause coming on to be heard on this day upon the petition of Broadcast Service of Mobile, Inc. for an extension of time for filing the transcript of record in the above styled cause on appeal to the Supreme Court and in accordance with authority under Revised Supreme Court Rule 37, February 1, 1955; it is Ordered and Decreed by the Court that said petition be, and hereby is, granted and that the time for preparing and filing of the transcript be extended to August 28, 1963.

Dated, July 26, 1963.

Joseph M. Hocklander, Judge.

Certificate of the Deputy Register (omitted in printing).

[fol. 403] [Stamp—Filed—August 12, 1963—Supreme Court of Alabama—J. Render Thomas, Clerk]

IN THE CIRCUIT COURT OF MOBILE COUNTY

STATE OF ALABAMA

In Equity

Case No. 58, 568-H

BROADCAST SERVICE OF MOBILE, INC., Complainant,

vs.

LOCAL 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AND WILLIAM RAYBURN, DAVID FRIDGE AND H. D. SMITH.

SUPREME COURT—RE:

1st Div. No. 163

MOBILE CIRCUIT COURT

In Equity

BROADCAST SERVICE OF MOBILE, INC., Appellant,

vs.

LOCAL 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AND WILLIAM RAYBURN, DAVID FRIDGE AND H. D. SMITH, Appellees.

REGISTER'S PETITION AS TO EXHIBITS

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

I, W. Elsworth Haughton, Register of the Circuit Court of Mobile County, Alabama, hereby respectfully petition the Supreme Court of the State of Alabama to receive for

inspection and consideration in connection with the transcript in the above styled cause, Complainant's Exhibit 3, a list headed "Advertizers Clearing to Advertize on Radio Station WSIM from August 10, 1962 to September 13, 1962", and the documents and records pertaining thereto incorporated as one exhibit by the Court, as said Exhibit is of such a nature and character as to make it impracticable to attach and incorporate same in the transcript and hereby petition that said Exhibit be allowed to be filed with the transcript in the above styled cause in its original form, to be considered as part of the transcript.

Respectfully submitted,

W. Elsworth Haughton, Register.

[fol. 404]

IN THE SUPREME COURT OF THE STATE OF ALABAMA

1st Div. No. 163

BROADCAST SERVICE OF MOBILE, INC., Appellant,

versus

LOCAL 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, and WILLIAM RAYBURN, DAVID FRIDGE and H. D. SMITH, Appellees.

Appeal from the Circuit Court of Mobile County, Alabama In Equity.

ASSIGNMENT OF ERRORS—August 23, 1963

Comes the appellant in the above entitled cause and shows unto the Court that there is manifest error in the foregoing transcript of the proceedings in the Circuit Court of Mobile County, Alabama, in Equity sitting, to the great damage and prejudice of this appellant, and as grounds of error appellant assigns the following separately and severally:

1. The trial court erred in its order of May 23, 1963, in granting the motion to dissolve the temporary injunction theretofore issued on the 13th day of September, 1962. (T. 384)

2. The trial court erred in its order of May 23, 1963, in granting the motion to dissolve the temporary injunction theretofore issued on the 13th day of September, 1962, on the grounds that the trial court's jurisdiction was preempted by the National Labor Relations Act. (T. 384)

[fol. 405] 3. The trial court erred in its order of May 23, 1963, in failing to find for the appellant on appellees' motion to dissolve the temporary injunction which was issued on the 13th day of September, 1962. (T. 384)

4. The trial court erred in its order of May 23, 1963, in dissolving the temporary injunction theretofore issued on the 13th day of September, 1962. (T. 384)

5. The trial court erred in its order of May 23, 1963, in denying the relief prayed for in the complaint as last amended. (T. 384)

6. The trial court erred in its order of May 23, 1963, in failing to grant the relief prayed for in the bill of complaint as last amended. (T. 384)

7. The trial court erred in its order of May 23, 1963, in failing to find that the plea to the jurisdiction of the court refiled to the bill as last amended was insufficient. (T. 384)

8. The trial court erred in taxing the costs of the cause to the appellant. (T. 384)

9. The order granting the motion to dissolve the temporary injunction is contrary to the law in this cause. (T. 384)

10. The trial court's finding that the trial court's jurisdiction was preempted by the National Labor Relations Act is contrary to the law in this cause. (T. 384)

11. The order of the trial court granting the motion to dissolve the temporary injunction issued on the 13th day

of September, 1962, on the ground that the trial court's jurisdiction was preempted by the National Labor Relations Act is contrary to the great weight of evidence in this cause. (T. 384)

12. The order of the trial court granting the motion to dissolve the temporary injunction issued on the 13th day of September, 1962, on the ground that the trial court's [fol. 406] jurisdiction was preempted by the National Labor Relations Act is contrary to the evidence in this cause. (T. 384)

13. The trial court erred in failing to render a final decree in favor of the appellant granting the relief prayed for in the bill of complaint. (T. 384)

14. The trial court erred in failing to render a final decree in favor of the appellant granting the injunctive relief prayed for in the complaint. (T. 384)

15. The trial court erred in failing to render a final decree in favor of the appellant granting damages as prayed for in the bill of complaint. (T. 384)

Dated at Mobile, Alabama, this 23rd day of August, 1963.

Kilborn, Darby and Kilborn, By Willis C. Darby, Jr., 307 First National Bank Bldg., Mobile, Alabama, Solicitors for Appellant;

Stone & Howard, By Ralph Howard, First National Bank Bldg., Mobile, Alabama, Solicitors for Appellant.

Certificate of Service (omitted in printing).

fol. 407]

IN THE SUPREME COURT OF THE STATE OF ALABAMA

The Court Met Pursuant to Adjournment

Present: All the Justices
Mobile Circuit Court

1st Div. 163

1st Div. No. 163

BROADCAST SERVICE OF MOBILE, INC.

vs.

LOCAL 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, and WILLIAM RAYBURN, DAVID FRIDGE and H. D. SMITH

ORDER OF SUBMISSION—November 5, 1963

Come the parties by attorneys and submit this cause on briefs for decision.

Court En Banc

[fol. 408] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF ALABAMA

1st Division 143

RADIO BROADCAST TECHNICIANS LOCAL UNION 1264

v.

JEMCON BROADCAST CO., INC.

1st Division 163

BROADCAST SERVICE OF MOBILE, INC.

v.

RADIO BROADCAST TECHNICIANS LOCAL UNION 1264

SUPPLEMENTAL BRIEF, MOTION AND STATEMENT OF POSITION ON BEHALF OF RADIO BROADCAST TECHNICIANS LOCAL UNION 1264—Filed November 19, 1963

The case first above styled, 1st Division 143, was argued and submitted on November 14, 1963. The second case, 1st Division 163, was submitted on briefs on November 5, 1963.

Counsel was advised by the Court at the time of argument in 1st Division 143 that oral argument cannot be had in 1st Division 163 before the next call of the 1st Division of the Court which, as we recall, is scheduled to be held in April, 1964. Therefore, because of the delay which would be attendant upon oral argument, Radio Broadcast Technicians Local Union 1264 opposes any motion, which may be filed by Appellant in 1st Division 163, to set aside the [fol. 409] submission in that case and set the same for oral argument.

The principal issues in both these cases involve contentions that the Alabama Courts are without jurisdiction because the National Labor Relations Board has exclusive jurisdiction to adjudicate the subject matter of the respective cases. The two cases therefore involve the same basic law, and concurrent consideration of the two cases by a single division of the Court would materially lighten the burden of decision. Accordingly, it is moved that 1st Division 163 be assigned to the same division of the Court as that to which 1st Division 143 has been submitted.

The *Jemcon* case, 1st Division 143, involves a contention of the Plaintiff below, here Appellee, that the Union was seeking to force it to violate the Alabama right-to-work law. The trial Court felt constrained by *Alabama Highway Express, Inc.* v. *Teamsters Local Union 612,* 368 Ala. 392, to hold that the State Court had jurisdiction to enforce the State's right-to-work law. As was pointed out in brief, the *Alabama Highway Express* decision should be overruled because of subsequent decisions of the United States Supreme Court squarely in point which hold that exclusive jurisdiction lies in the National Labor Relations Board to give effect to State right-to-work laws in enforcing the Federal statutory scheme.

1st Division 163, however, *does not* contain a contention that the Union was attempting to force the Appellant in that case to violate the Alabama right-to-work law and the Circuit Court in that case was not acting under the constraint imposed by the *Alabama Highway* decision. Consequently, the Circuit Court held that the State was without jurisdiction absent such a contention.

[fol. 410] We urge that *Alabama Highway* should be overruled and this Court should issue its decision in both cases holding that the trial Courts were without jurisdiction.

Respectfully submitted,

Pierre Pelham, 1st Nat'l Bank Annex, Mobile, Ala.;

Adair, Goldthwaite & Stanford, By J. R. Goldthwaite, Jr., 1431 Candler Bldg., Atlanta, Ga., 30303, Phone: 523-2525.

[fol. 411] MOTION TO SET ASIDE SUBMISSION ON BRIEFS AND SET FOR ORAL ARGUMENT AND ORDER DENYING SAME (omitted in printing).

[fol. 414] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF ALABAMA

JUDICIAL DEPARTMENT

October Term, 1963-64

1 Div. 163

BROADCAST SERVICE OF MOBILE, INC.

v.

LOCAL 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, ET AL.

Appeal from Mobile Circuit Court, In Equity.

OPINION—filed December 12, 1963

SIMPSON, Justice.

This is an appeal from a final decree of the Circuit Court of Mobile County, Alabama, in Equity, dissolving a tem-

porary injunction theretofore in effect and dismissing the [fol. 415] cause on the ground that the court's jurisdiction was pre-empted by the National Labor Relations Act.

The action was commenced on September 4, 1962, by appellant by verified bill of complaint, which, among other things, prayed for a temporary restraining order, enjoining Local 1264, International Brotherhood of Electrical Workers, et al., from interfering with the conduct of appellant's business.

Appellant on February 10, 1963, filed a verified amended complaint alleging that the appellant, prior to August 1, 1962, purchased certain assets of Radio Station WAIP, Prichard, Alabama, and commenced operation of the station with a full complement of personnel. Around August 3, 1962, appellee demanded that appellant employ David Fridge as radio engineer and demanded that appellant recognize appellee as the collective bargaining representative of appellant's employees although none of the employees of appellant had designated the appellee as his collective bargaining representative. Appellant refused to terminate any of its employees in order to employ Fridge. On August 10, 1962, appellee began picketing appellant's office in Prichard, Alabama; none of the persons who picketed appellant had ever been employees of appellant. Appellee "since August 10, 1962, has by picketing, letters addressed to persons, firms and corporations and by personal contacts [fol. 416] sought to effect a boycott of complainant and to cause persons doing business with complainant to refrain from doing business with complainant". Since August 10, 1962, appellee by letter and personal contact induced customers of appellant to cancel advertising agreements with appellant. The object of the picketing and boycotting was to force and require appellant to bargain with appellee although appellee had not been selected by any of appellant's employees for the purpose of collective bargaining; to force appellant to violate the Alabama Right to Work act; to force appellant's employees to join the appellee; to force appellant to employ members of the appellee; to ruin the business of appellant and to require persons advertising over appellant's radio station to breach their advertising contracts with appellant. The complaint al-

leges that irreparable damage would be caused to appellant unless the picketing and related conduct is enjoined.

Appellee filed a plea in abatement to the jurisdiction of the court on the ground that the National Labor Relations Board had exclusive jurisdiction over the matters alleged in the complaint. The plea to the jurisdiction admitted that the appellee had by letter and by personal contact requested advertisers in Mobile, Alabama, to advertise over radio stations other than WSIM. After a hearing in open court [fol. 417] on September 13, 1962, the trial court issued a temporary injunction upon the amended bill of complaint and affidavits submitted by the appellant and appellee. In its temporary injunction the court found:

"1. The picketing conducted by the respondent union and its agents is entirely peaceful and that there is no threat or apprehension of physical violence;

"2. The complainant has five employees none of whom belong to or desire the respondent union to represent them;

"3. The purpose of the respondent union's picketing, respondent union's letters addressed to 'All Merchants of the Mobile-Prichard Area' and personal contacts by representatives of the respondent union with advertisers over complainant's Radio Station is to require complainant to recognize the respondent union as the bargaining agent of complainant's employees or to require the complainant to employ a member of the respondent union as a radio engineer at complainant's station located in Prichard, Alabama.

"The Court further finds that each of the objectives of the picketing is contrary to the public policy of the [fol. 418] State of Alabama as expressed in the Alabama Right to Work Law and the common law of the State of Alabama.

"The Court further finds that the picketing, personal solicitation and solicitation by letter is causing irreparable damage to the complainant and the Court being of the opinion that the complainant's application for a temporary writ of injunction as prayed for in the amended bill of complainant should be granted."

In its answer to the amended complaint the appellee admitted that the respondent since August 10, 1962, had by picketing, letters addressed to persons, firms and corporations and by personal contact sought to effect a boycott of complainant and to cause persons doing business with or desiring to do business with complainant to cease doing business with complainant or to refrain from doing business with complainant.

Appellee's answer further admitted that appellee by personal contact and by mail contacted advertisers of WSIM for the purpose of inducing them to cease advertising over radio station WSIM but sought to justify the action on the ground that it was protected in its activity under the National Labor Relations Act and the First and Fourteenth Amendments to the Constitution of the United States.

[fol. 419] On May 23, 1963, after hearing in open court, the court entered an order dissolving the temporary injunction and dismissing the cause on the ground that jurisdiction of the Circuit Court of Mobile County, Alabama, was pre-empted by the National Labor Relations Act. This appeal followed.

While there are several assignments of error, only one question is presented: Did the Circuit Court err in determining that it did not have jurisdiction of the subject matter?

Appellee argues that all of the acts and conduct alleged in the complaint are subject matter regulated by the National Labor Relations Act, as amended, and as to which the National Labor Relations Board has exclusive authority to adjudicate legalities and illegalities if the dispute affects interstate commerce. It is further argued that state courts are without authority to adjudicate the merits of a labor dispute as to which it is arguable that the Labor Relations Board would assert jurisdiction and that each case must be first submitted to that Board to determine in the first instance whether it will assert jurisdiction.

Appellant, on the other hand, argues that the entire field of labor relations has not been pre-empted by federal legislation; that there remains a substantial area in which the states may act, and that in fact the activity complained of here has been expressly left to the states by Congress

[fol. 420] through the enactment of an amendment to the Labor Management Relations Act of 1947, as amended in 1959 (29 U. S. Code Ann., § 164, [c] [1] and [2]), providing:

Section 164 (c) (1):

> "The Board, in its discretion, *may, by rule of decision* or by published rules adopted pursuant to the Administrative Procedure Act, *decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction;* Provided, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959." [Emphasis supplied.]

Section 164 (c) (2):

> "Nothing in this subchapter shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) [fol. 421] of this subsection to assert jurisdiction."

We are constrained to agree with appellant. It seems to us that the National Labor Relations Board has, in the words of the above amendment, "declined to assert jurisdiction over any labor dispute involving" the class or category of employers to which appellant belongs, thus leaving such disputes within the jurisdiction of the state court. In support of this belief, we quote the following language from *Raritan Valley Broadcasting Co., Inc.* v. *American Federation of Television & Radio Artists, New York Local (AFL-CIO)*, 122 NLRB, No. 16, Case No. 22-RC-190, which opinion was rendered by the National Labor Relations Board after a hearing before the full Board on November 14, 1958:

"Ever since the enactment of the National Labor Relations Act in 1935, the Board has consistently held to the position that it better effectuates the policies of the Act and promotes the prompt handling of cases not to exercise its jurisdiction to the fullest extent possible under the authority delegated to it by Congress. For the first 15 years the Board exercised its discretion in this area on a case-by-case basis. In 1950 the Board first adopted certain jurisdictional standards designed [fol. 422] to aid it in determining where to draw the dividing line between exercised and unexercised jurisdiction. In 1954 the Board reexamined its jurisdiction policies in the light of its experience under the 1950 standards and revised its jurisdictional standards. At that time the Board noted that 'further changes in circumstances may again require future alterations of our determinations one way or another'. Consistent with this practice of periodic review of its jurisdictional policies and a direct consequence of the Supreme Court's decision in P. S. Guss, d/b/a Photo Sound Products v. Utah Labor Relations denying to the States authority to assert jurisdiction over enterprises as to which the Board declines to exercise its statutory jurisdiction, the Board reexamined its existing jurisdictional policies and the standards through which such policies were implemented. As a result the Board determined to revise its jurisdictional policies at this time so that more individuals, labor organizations and employers may invoke the rights and protections afforded by the statute. In Siemons Mailing Service the Board fully set forth the general considerations [fol. 423] which persuaded it that this could best be accomplished by the utilization of revised jurisdictional standards as an administrative aid in making its jurisdictional determinations. The Board has chosen this case to set forth the revised standard to be applied to enterprises operating communication systems.

"The Board has decised that it will better effectuate the policies of the Act to assert jurisdiction in all future and pending cases involving enterprises engaged

in the operation of radio or television broadcasting stations or telephone or telegraph systems which do a gross volume of business of at least $100,000 per annum.

"In adopting this standard the Board has given due consideration to all relevant budgetary factors bearing on its capability to handle an increased caseload, and to comments and briefs of interested parties received in response to its invitation contained in the Board's July 22, 1958, press announcement of its proposed changes in jurisdictional policies. It is the Board's opinion that in the light of its current budgetary limitations and the volume of cases which may be [fol. 424] expected under its other standards, the $100,000 gross volume of business standard will extend the Board's jurisdiction over communications systems to the maximum possible extent at this time and will reasonably ensure that the Board will assert jurisdiction over all labor disputes involving such enterprises which tend to exert a pronounced impact on commerce."

The record clearly shows, and it is apparently undisputed, that appellant's gross volume of business per annum is considerably below the $100,000 standard established by the Board. Congress saw fit to amend the Labor Management Relations Act as set forth above following the pronouncement of the Supreme Court of the United States in the *Guss* case, supra.

Appellee argues that affiliated enterprises of the majority and controlling stockholders of appellant should be considered by the Board for determining whether the jurisdictional standards are met and insists that the court must base its jurisdiction on a consideration of what the Board would do under the facts of this case, and that in any event the case must first be submitted to that body. We cannot agree. We have recently stated that:

"• • • the authority is clear to the effect that every court of general jurisdiction has judicial power to determine the question of its own jurisdiction".—See

[fol. 425] *Alabama Highway Express, Inc.* v. *Local 612, etc.*, 268 Ala. 392, 397, 108 So. 2d 350, and cases there cited.

It is equally clear that the law of this state is settled to the effect that every reasonable intendment, not contradicted by the face of the pleadings, will be made in favor of the jurisdiction of the Circuit Court and plea to the jurisdiction of the Circuit Court must allege facts which exclude every condition under which jurisdiction may be lawfully exercised.—*Atlantic Coast Line R. Co.* v. *Ballard*, 202 Ala. 354, 80 So. 436. Here the appellee's plea failed to allege that the appellant's gross business exceeded $100,000 per annum which, if proven, would exclude the court's jurisdiction under §164 (c) (1), Labor Management Relations Act of 1947, as amended, supra. On this basis we believe the learned trial court erred in dismissing the temporary injunction on the ground that the court's jurisdiction was pre-empted.

Appellee argues that *Alabama Highway Express, Inc.* v. *Local 612, etc.*, supra, must be overruled in light of the pronouncement of the Supreme Court of the United States in *Construction and General Laborers Union* v. *Curry*, 371 U. S. 544.

Inasmuch as we believe that the jurisdiction of the Circuit Court in this case is preserved by § 164 (c) (1), Labor [fol. 426] Management Relations Act, supra, and by the express declination of the National Labor Relations Board to assert its jurisdiction in cases involving small radio stations, of which appellant is concededly one, we can see no need at this time to determine whether the court's jurisdiction would have been pre-empted had the appellant sought the court's jurisdiction only on the basis of facts claimed to have been in violation of this state's Right to Work Law.

It should be made very clear that we have made no attempt to decide the merits of this case, but simply hold that the trial court erred in its determination under the undisputed facts that it had no jurisdiction over the subject matter involved.

Reversed and remanded, with directions that the Temporary Restraining Order be reinstated.

Livingston, C. J., Merrill and Harwood, J.J. concur.

[fol. 427]

IN THE SUPREME COURT OF THE STATE OF ALABAMA

The Court Met Pursuant to Adjournment.

Present: All the Justices.

Mobile Circuit Court, in Equity

1st Div. 163

BROADCAST SERVICE OF MOBILE, INC.,

vs.

LOCAL 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, et al.

JUDGMENT—December 12, 1963

Come the parties by attorneys and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is manifest error.

It Is Therefore Considered, Ordered, Adjudged and Decreed that the decree of the Circuit Court be reversed and annulled, and the cause remanded to said court for further proceedings therein with directions that the temporary restraining order be reinstated.

It Is Further Considered, Ordered, Adjudged and Decreed that the appellees, Local 1264, International Brotherhood of Electrical Workers and William Rayburn, David Fridge and H. D. Smith, pay the costs accruing on said appeal in this Court and in the Court below, for which costs let execution issue.

[fol. 428] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF ALABAMA

1st Division 163

Appealed from the Circuit Court of Mobile County,

No. 58-568-H, In Equity

BROADCAST SERVICE OF MOBILE, INC., Appellant,

v.

RADIO BROADCAST TECHNICIANS, LOCAL UNION No. 1264 and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, et al., Appellees.

MOTION FOR REHEARING AND MEMORANDUM IN SUPPORT THEREOF—Filed December 20, 1963

Comes the appellee and requests that the Court rehear and reconsider its decision issued December 12, 1963, in the within styled case and that upon such reconsideration the decision of this Court be vacated and a new decision and judgment be issued affirming the judgment of the Court below. For grounds of such motion appellee shows that the Court erred (1) in its analysis of the pleadings in the case, (2) in restricting its consideration to "the face of the pleadings" and in failing to consider the evidence before the Court below relative to the jurisdictional issue, (3) in failing to find that controlling decisions of the National Labor Relations Board applied to the facts in this case demonstrate that the Board would assert jurisdiction to adjudicate the subject matter of the appellant's complaint, and (4) in failing to find that, in any event, under the pleadings and evidence in this record it is arguable that the [fol. 429] National Labor Relations Board would assert jurisdiction over the controversy and in failing to yield to the "primary competence" of the Board in such circumstances.

On page 6 of its decision the Court correctly states appellee's contentions that (1) controlling decisions of the National Labor Relations Board hold that business of the appellant affects interstate commerce to the extent that the Board would assert its exclusive authority to adjudicate the legalities and illegalities of the dispute and (2) that, in any event, this Court must yield to the jurisdiction of the Board when it is "arguable" that the Board would assert jurisdiction. The Court, however, restricts its consideration to the second of these contentions and seems to overlook entirely the several Board decisions cited by appellee which are applicable to commonly owned and controlled financial enterprises.

In its decision the Court cites and relies exclusively upon the ruling of the Board in *Raritan Valley Broadcasting Co., Inc. and American Federation of Television and Radio Artists*, 122 NLRB #16, which is applicable to *single* radio stations, as distinguishable from *multiple-enterprise* chains of radio stations; and the Court holds that, because appellee did not rely and plead the single station standard in its plea to the jurisdiction, the Court will look no further.

In its plea to the jurisdiction appellee alleged (R. 9) that the activities of appellee complained of by appellant substantially affect interstate commerce and (R. 81) that [fol. 430] the appellant is one of four commonly owned and controlled radio stations of the Holt Broadcasting Service, having a common labor relations policy, and that the revenues received by the entire financial enterprise of the Holt Broadcasting Service from the operation of the four station chain greatly exceed $100,000 per year. These allegations on the face of the pleadings assert facts which are borne out in proof and which demonstrate that the National Labor Relations Board would assert jurisdiction over *this* controversy. The allegations of the plea to the jurisdiction therefore exclude every condition under which jurisdiction lawfully may be exercised by the Alabama Courts.

The evidence in the record which leads to the necessary conclusion that the four stations are a single financial enterprise in the consideration of the National Labor Relations Board are fully detailed in appellee's original brief.

In cases such as the present the Board considers the substantiality of the effect upon interstate commerce of the entire financial enterprise rather than that of a single member of the chain.

Major Service Co., 129 NLRB 794;
Orkin Exterminating Co., 115 NLRB 622;
Crenshaws, Inc., 115 NLRB 1374;
Southeastern Concrete Products, 127 NLRB No. 118;
Alton Myers, 127 NLRB No. 138;
Central Dairy Products, 114 NLRB 1189;
Wash Well No. 2, Inc., 139 NLRB No. 37;
P-M Garages, Inc., 139 NLRB No. 84;
Sakrete of Northern California, Inc., 137 NLRB No. 131;
[fol. 431] *Perfect T-V, Inc.*, 134 NLRB 575;
Pine State Creamery Co., Inc., 130 NLRB 892;
Quality Coal Corp., 139 NLRB No. 6;
Corfu Mfg. Co., 48 LRRM 1584;
Hamilton Bros., Inc., 130 NLRB 233;
Alamo-Brown Beef Co., 128 NLRB 32;
Chicago Northside Newspapers, 124 NLRB 254;
Edward Small Productions, Inc., 127 NLRB 283;
Alpha Corp., 128 NLRB 309;
Checker Cab Co., 141 NLRB No. 64;
NLRB v. *Sightseeing Guides Union*, 310 F 2d 40.

Even if this Court did not undertake on this record to overrule *Alabama Highway Express, Inc.* v. *Teamsters Local No. 612*, 268 Ala 392, 108 So 2d 350, consideration of the above cited Labor Board authorities and the application of those authorities to the pleadings and evidence in this case require affirmance under the rule annunciated in *Alabama Highway Express*.

We therefore urge that for each of the reasons herein assigned the Court should reconsider its decision of December 12, and issue a new opinion and judgment affirming the judgment of the Court below.

Respectfully submitted,

Pierre Pelham, 1st Nat'l Bank Bldg. Annex, Mobile, Alabama.

Adair, Goldthwaite & Stanford, By J. R. Goldthwaite, Jr., 1431 Candler Bldg., Atlanta, Ga. 30303, Phone: 523-2525.

[fol. 432] Certificate of Service (omitted in printing).

[fol. 433]

IN THE SUPREME COURT OF THE STATE OF ALABAMA

The Court Met Pursuant to Adjournment.

Present: All the Justices.

[Title omitted]

ORDER DENYING MOTION FOR REHEARING—January 16, 1964

It Is Ordered that the application for rehearing filed on December 20, 1963, be and the same is hereby overruled.

No Opinion Written on Rehearing.

[fol. 434] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 435]

SUPREME COURT OF THE UNITED STATES

No. 61, October Term, 1964

RADIO AND TELEVISION BROADCAST TECHNICIANS LOCAL UNION 1264, ETC., et al., Petitioners,

vs.

BROADCAST SERVICE OF MOBILE, INC.

ORDER ALLOWING CERTIORARI—October 12, 1964

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
APR 15 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. [redacted] 61

RADIO AND TELEVISION BROADCAST TECHNICIANS LOCAL UNION 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL,

Petitioners,

vs.

BROADCAST SERVICE OF MOBILE, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. ——

RADIO AND TELEVISION BROADCAST TECHNICIANS LOCAL UNION 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, EL AL,

Petitioners,

VS.

BROADCAST SERVICE OF MOBILE, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

Radio and Television Broadcast Technicians Local Union 1264, et al., pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of Alabama entered in the above entitled case on December 12, 1963, as to which a motion for re-hearing was denied by that Court by entry dated January 16, 1964.[1]

CITATIONS TO OPINIONS BELOW

Two opinions of the trial court (R. 83 & 384) are unreported and are printed in Appendix C, *infra,* pp. 14a and 15a. The opinion of the Supreme Court of Alabama (R. 414), printed in Appendix C, *infra,* p. 16a, is reported at — Ala. —, 159 So. 2d 452.

[1] The petitioning labor organization is an unincorporated voluntary association. Also petitioners herein are William Rabon, David Fridge and H. D. Smith, members of such association, who were defendants in the trial court and appellees in the Supreme Court of Alabama.

JURISDICTION

The opinion (R. 414) and judgment (R. 427) of the Supreme Court of Alabama were entered on December 12, 1963. Timely application for rehearing filed on December 20, 1963 (R. 428) was denied on January 16, 1964. (R. 433) The jurisdiction of this Court is invoked under 28 USC, Sec. 1257(3). [Since rights, privileges and immunities were set up and claimed under the Constitution and statutes of the United States and are believed to have been improperly denied by the highest court of the State of Alabama.]

QUESTIONS PRESENTED

I.

Whether the State of Alabama has jurisdiction through it courts to enjoin concerted activity of employees in the course of a dispute with an employer which affects interstate commerce where it is arguable that the National Labor Relations Board, under rules of decision previously issued by it, would assert its jurisdiction under the National Labor Relations Act, as amended.

II.

Did the Supreme Court of Alabama, in reversing the decision of the trial court that it was without jurisdiction because of Federal pre-emption, act in derogation of the holdings of this Court in *Construction and General Workers' Union* v. *Curry*, 371 U. S. 544; *International Brotherhood of Electrical Workers* v. *Farnsworth and Chambers Co.*, 353 U. S. 969; *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236; *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468; and other cases.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitution of the United States:

Article I, Section 8, Clauses 3 and 18 (Commerce Powers)

Article VI Clause 2 (Federal Supremacy)

Labor Management Relations Act, 1947:
(June 23, 1947, Ch. 120, § 1, *et seq.;* 61 Stat 136, *et seq.;* 29 USC 141, *et seq.*)

Labor Management Reporting and Disclosure Act, 1959:
(September 14, 1959, P. L. 86-257, Title VII, § 701, *et seq.;* 73 Stat. 541, *et seq.;* 29 USC 153, 158, 159, 160, 164 and 187)

National Labor Relations Act, as amended by the Labor Management Relations Act, 1947, and by the Labor Management Reporting and Disclosure Act, 1959:
(June 23, 1947, Ch. 120, Title I, § 101, *et seq.;* 61 Stat. 136, *et seq.;* 73 Stat. 541, *et seq.;* 29 USC 151, *et seq.*)

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61 Stat. 141, 73 Stat. 542, 29 USC 158 (b) & (c), [NLRA, Sec. 8 (b) & (c)]

61 Stat. 146, 73 Stat. 544, 29 USC 160 (a), (c), (k) & (l) [NLRA, Sec. 10 (a), (c), (k) & (l)]

73 Stat. 541, 29 USC 164 (c) [NLRA, Sec. 14 (c)]

Texts are set out in Appendix A, pp. 1a to 6a. *infra.*

STATEMENT OF THE CASE

The petitioning union and Radio Station WAIP in Mobile, Alabama, were parties to a collective bargaining agreement covering the conditions of employment of petitioner David Fridge, a full-time radio technician, and another employee who was a part-time technician. (R. 172, 175, 207, 220, 222) Station WAIP was sold to respondent and the radio technicians were displaced. (R. 168, 169) Respondent operated the station under the call letters WSIM (R. 2) After conversations concerning the employment of Fridge and the adherence to standards established by collective bargaining with other radio stations, (R. 220, *et seq.*, 225 *et seq.*, 252, *et seq.*, 255, *et seq.*, 260, *et seq.*) the petitioning union commenced peaceful picketing at the premises of Radio Station WSIM (R. 264) and began soliciting advertisers to patronize stations having union contracts rather than to patronize respondent. (R. 3, 265,

266) The solicitations were made by letter and personal contact. (R. 266, 267)

On August 31, 1962, respondent filed a complaint in the Circuit Court of Mobile County asking that the picketing and solicitation of advertisers be enjoined until an election for the selection of a collective bargaining representative could be held in accordance with Federal law. (R. 1) The union filed a plea to the jurisdiction on September 10, 1962, asserting Federal preemption. (R. 7) On the same date, respondent filed an amended complaint, which substituted for the original, alleging that the picketing and solicitation of advertisers constituted a boycott, illegal under Alabama law, and was a violation of the State's right-to-work law. (R. 27)

On September 12, 1962, petitioners amended the plea to the jurisdiction.[2] The plea, as amended, alleged that respondent is one of a group or chain of four radio stations, known as the Holt Broadcasting Service, the headquarters of which are located in Hattiesburg, Mississippi, and that the other stations comprising the Holt Broadcasting Service are located in Montgomery, Alabama, Hattiesburg, Mississippi, and McComb, Mississippi. The plea averred that the four radio stations are commonly owned and controlled, with Charles W. Holt owning a majority interest in all four stations and being the executive head of all four stations; that a common personnel and labor relations policy prevails at all four stations; that respondent is part of the integrated financial operation known as the Holt Broadcasting Service; that the volume of business done by the four radio stations greatly exceed $100,000 per year; that the activities of petitioners constitute protected concerted activity within the meaning of the National Labor Relations Act, as amended; that the National Labor Relations Board would assert jurisdiction over the operations of respondents as a part of a business substantially affecting

[2] R. 81. Excerpts from the plea to the jurisdiction showing that the claim of Federal right was properly and timely filed, are printed in Appendix B, pp. 7a to 10a.

interstate commerce (R. 81); that the State court was without jurisdiction because the jurisdiction of the National Labor Relations Board over the labor dispute was exclusive (R. 10); and that for the court to grant injunctive relief would be unconstitutional and in derogation of the authority granted to the United States Congress by Article I, Section 8, Paragraph 3 of the Constitution of the United States to regulate interstate commerce and of Article VI, Clause 2, of the Constitution of the United States providing for the supremacy of the Federal Constitution and the laws enacted pursuant thereto. (R. 10)

Following a preliminary hearing the Court issued an interlocutory decree on September 3, 1962, finding the conduct of the petitioners to be violative of Alabama law and enjoining further activity by petitioners. (R. 83; App. C., p. 14a)

The case came on for final hearing, following which the trial court found that its jurisdiction was pre-empted by the National Labor Relations Act. A motion to dissolve the injunction was granted and the case was dismissed on May 23, 1963. (R. 384, App. C., p. 15a)

Respondent requested reinstatement of the injunction pending appeal which request was granted on May 30, 1963, notwithstanding the earlier ruling of the trial court that it was without jurisdiction. (R. 387, 388)

Respondent appealed and on December 12, 1964, the Supreme Court of Alabama, relying upon its previous decision in *Alabama Highway Express, Inc.* v. *Teamsters' Local Union 612*, 268 Ala. 392, 108 So. 2d 350, held (R. 414; App. C., p. 16a) that the state court had the prerogative of determining its own jurisdiction irrespective of the holdings of the National Labor Relations Board and that it chose to base its determination of jurisdiction upon the Board's decision establishing a volume of business of $100,000 per annum for a single radio station (*Raritan Valley Broadcasting Co., Inc.*, 122 NLRB 90) rather than upon the decisions of the Board applicable to commonly

owned and controlled financial chains.[3] The Court held that since petitioners had not pleaded and relied upon the $100,000 jurisdictional standard established by the Board for single radio stations, it considered the plea to the jurisdiction insufficient; and it refused to consider the decisions of the Board applicable to chain operations and reversed the jurisdictional determination of the trial court.

By motion for rehearing petitioners again pointed out that they relied upon specific decisions of the Board applicable to commonly owned and controlled financial enterprises, rather than upon the Board's jurisdictional standard applicable to single radio stations and requested reconsideration of its former judgment. (R. 428; App. B, p. 11a) The motion for rehearing was denied on January 16, 1964. (R. 433; App. C, p. 25a)

The evidence shows that Charles Holt is the majority owner of the four corporations operating radio stations and the sole owner of a service corporation which performs accounting, billing and other managerial services for the four radio corporations. Holt's wife is a minority stockholder in all four radio corporations. Bob Robinson is a minority stockholder in three of the radio corporations, Montgomery, Hattiesburg and Mobile. Mrs. Holt is Secretary of three of the radio corporations and Vice-President of the fourth and also of the service corporation. Robinson is President and Manager of the Montomery, Alabama radio corporation and Vice-President of the Hattiesburg, Mississippi and Mobile, Alabama radio corporations and of the service corporation. Stan Lightsey is Treasurer of all five corporations and Manager of the service corporation. (R. 323-326, 338, 347)

The service corporation shares office space with radio station WHSY in Hattiesburg, Mississippi in a building owned by WHSY, one of the chain. (R. 337) Holt and Lightsey have their offices in that building. (R. 115) Daily

[3] Twenty such Board decisions were cited to the Alabama Court, both in petitioners' original brief and in their motion for rehearing. (R. 430; App. B., p. 12a)

financial reports are forwarded by each station manager to Hattiesburg, Mississippi addressed to Lightsey at Station WHSY. (R. 116, 332) A copy is sent to Robinson in Montgomery. (R. 332)

Lightsey handles all bookkeeping, billing of advertisers and the payrolls for the four radio corporations from the central finance office. He supervises the credit policies and participates in detail in the collection of accounts of all four radio stations. (R. 125, 328) Day-to-day purchases of supplies are reported to Lightsey and paid for by him. (R. 327) Each station has a separate bank account, checks on which are written by Lightsey (R. 326) and signed by Holt alone or by Robinson and Lightsey. (R. 126, 127) Lightsey participates in the major financial transactions of the four radio corporations and he made the property appraisal of Station WAIP when it was purchased by the financial enterprise. (R. 170, 171) Radio equipment is transferred back and forth between the four corporations. (R. 183, 184)

Only two of the stations, Montgomery and Mobile, have a national advertising agent. This agent was employed by Holt and Robinson. (R. 160, 339) Holt and Robinson employ the managers and the engineering personnel of the radio stations. (R. 338, 114, 132, 220, 221, 223) They have also employed other personnel for the various stations and employees are inter-changed between stations from time to time. (R. 103, 113, 129, 297) While station managers have authority to hire and fire station personnel, such acts are discussed with Holt or Robinson (R. 130, 131); and station managers do not have the authority to make decisions as to matters of recognition of labor unions, collective bargaining or other labor relations policies. (R. 155, 156, 225, 226, 227) Robinson or Holt make the decisions on these policy matters (R. 112, 119, 226); and Holt, Robinson and Lightsey personally participated in discussions with Local 1264. (R. 220, 225, 226) Respondent's Mobile station manager repeatedly asserted that he had no authority to discuss labor relations policy with the union representatives. (R. 112, 220)

Holt requires radio stations to announce that they are members of the Holt Broadcasting Service (R. 105, 122) and employees of respondent refer to the financial enterprise as "the Holt group" or "the Holt enterprises." (R. 114, 198) Holt personally visits each station regularly and frequently (R. 298, 300), and supervises the sales policies of each station and the sales efforts of each salesman. He also gives supervisory advice and suggestions as to the conduct of their daily work. (R. 105, 106, 122, 301) Robinson advised representatives of Local 1264 that the Holt stations were thinking of employing an engineer (radio technician) who would be resident chief engineer in Mobile, and would be consulting engineer for the other stations. (R. 114, 223)

The manager of the Mobile station is in almost daily contact with Mr. Robinson concerning the everyday operations of the station. (R. 305) Management of the Hattiesburg, Montgomery, and Mobile stations is particularly integrated in Holt, Robinson and Lightsey. The Montgomery station has annual advertising sales of approximately $200,000 in volume, while Hattiesburg and McComb have annual advertising sales of approximately $100,000 each. Advertising sales at Mobile, were being sold at a rate which, when projected for a twelve month period, would approximate a total between $50,000 and $60,000. (R. 341)

Final trial of the case, at which all available evidence relative to the jurisdictional issue was introduced, resulted in dismissal by the trial court, and the only act remaining to be performed by the trial judge, following reversal and remand by the Supreme Court of Alabama, is the assessment of damages on the record already made. The decision of the Alabama Supreme Court is final as to all Federal questions and review by this Court upon this application will be dispositive of all Federal issues in the case.[4]

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[4] Under these circumstances this Court will assert jurisdiction. *Construction & General Laborers' Local Union* v. *Curry*, 371 U. S. 544.

REASONS FOR GRANTING THE WRIT

I.

The Decision Below Is Inconsistent With Decisions of This Court and Is Therefore Incorrect.

All radio stations affect interstate commerce because such are authorized and operated pursuant to Federal statutes enacted by Congress under its power to regulate interstate commerce power. The Natonal Labor Relations Board therefore has statutory jurisdiction under the National Labor Relations Act, as amended, to regulate the labor relations of all radio stations in accordance with the labor relations policies which Congress thought necessary and proper in industries affecting commerce. *Amalgamated Association of Street Employees* v. *Wisconsin Board,* 340 U. S. 383. Where the labor relations of such stations are concerned, the only jurisdictional question is whether the Board would assert jurisdiction under the discretionary policies defined by it; and unless the Board had by a rule of decision declined to assert jurisdiction over a labor dispute involving a similar class or category of employers because, "in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction," the State of Alabama erred in asserting jurisdiction over this labor dispute. *National Labor Relations Act,* Sec. 14(c)(1) and (2); 29 USC 164(c)(1) and (2).[5]

In *Raritan Valley Broadcasting Co., Inc.,* 122 NLRB 90, the Board held that it would not assert jurisdiction over labor relations and labor dsputes at single radio stations having an annual sales volume of less than $100,000. Similar discretionary jurisdictional rules based upon volume of annual sales have been issued by the Board covering many industries, some of which are based on the flow of goods in commerce and others of which, as in the case of radio stations, are based upon gross sales with a requirement that

[5] The Board has not undertaken to publish rules, adopted pursuant to the Administrative Procedure Act, for the guidance of parties as to the discretionary exercise of its jurisdiction.

statutory jurisdiction also be shown. *Twenty-Third Annual Report of the National Labor Relations Board*, 1958, pp. 7-9. See also *Twenty-Fifth Annual Report of the National Labor Relations Board*, 1960, pp. 18-20.

As respects all industries, the Board has repeatedly held that, where statutory jurisdiction is shown, its discretionary exercise of jurisdiction will be based upon the totality of the impact upon interstate commerce of an entire financial enterprise rather than upon the impact of a single segment of the enterprise standing alone. In such cases involving separate corporations which are a part of a commonly owned and controlled chain having centralized control of labor relations policies vested in common ownership, officers, and management, the Board holds that it will be governed in the exercise of its discretionary jurisdiction by the impact upon commerce of the entire enterprise; and it will assert jurisdiction over a corporate segment of the enterprise if the entire enterprise meets the standard established for the industry ($100,000 for radio and television, *Raritan, supra*) even though that segment alone would not satisfy the discretionary jurisdictional criteria.[6] Eg., *Perfect T. V., Inc.*, 134 NLRB 575; *The Family Laundry, Inc.*, 121 NLRB 1619; *Washwell No. 2, Inc.*, 139 NLRB 417; *P-M Garages, Inc.*, 139 NLRB 987; *Corfu Mfg. Co.*, 3-RC-2523 (June 28, 1961), 48 LRRM 1584.

Centralized control of the labor relations policies and the financial policies of the four radio stations, self-designated

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[6] The Board has also held that for the purposes of the discretionary determination it will consider the impact on interstate commerce of all businesses secondarily affected by a labor dispute rather than the impact of the primary employer disputant only. *National Labor Relations Board* v. *United Construction Workers*, 198 F 2d 391 (CA-4, 1952), cert. den., 344 U. S. 876; *Joliet Contractors Association v. NLRB*, 193 F 2d 833, (C-5, 195); *Madison Building and Construction Trade Council*, 134 NLR 3 517; *McAllister Transfer, Inc.*, 110 NLRB 1769; *Jamestown Builders Exchange, Inc.*, 93 NLRB 386. A foundation was laid in the record for the application of this jurisdictional rule but it is not deemed necessary to burden the Court by setting forth the detailed facts in this petion.

by the controlling owner as the "Holt Broadcasting Service," was shown to be tightly retained and exercised by Holt, the majority stockholder, and by Robinson, the minority stockholder, and Lightsey, were the officers of the corporations. It is therefore not only "arguable," but clearly apparent that the Board would assert its discretionary jurisdiction over the labor relations of respondent under the Board rules of decision cited, *supra*.

In such cases the State court must yield to the "primary competence" of the Board. *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236. Where this is shown, the State courts are without jurisdiction to enjoin concerted activity even though the State court might deem the objectives sought to be attained by such activity to be violative of the State's right-to-work law or other statutes. *Construction and General Laborers' Local Union* v. *S. J. Curry*, 371 U. S. 544; *IBEW Local Union* v. *Farnsworth and Chambers Co.*, 353 U. S. 969; *Weber* v. *Anheuser-Busch*, 349 U. S. 468; *Retail Clerks Int. Assn.* v. *Schermerhorn*, — U. S. —, 54 LRRM 2612 (second decision, Dec. 2, 1963).

II.

The Decision Below Is Inconsistent With Decisions of the Courts of Other States.

Past actions of the highest courts of various states, particularly in the South, have made it apparent that provincialism in legal thought creates a barrie to the acceptance of the will of the national majority as expressed in Federal labor relations policy. It has been necessary, almost without exception, for this Court to grant certiorari to review decisions of the highest courts of the various Southern States where Federal preemption of labor relations affecting commerce was urged, before those courts have been willing to acknowledge the preemptive dignity of Federal authority in the field. With almost equal consistency, having once been reversed, those courts now acknowledge Federal supremacy in this area.

By and large the Southern States by decisions of their appellate courts have come to recognize the authoritative implications of this Court's decisions in *Weber*, the second *Garmon* case, the *Curry* decision and other similar holdings. E.g., *Oil & Chemical Workers* v. *Shell Oil Co.*, — La. —, 150 So. 2d 102 (La. Ct. App., 1963), 52 LRRM 2406; *Caton* v. *Pic-Walsh Freight Co.*, — Tenn. —, 364 S. W. 2d 931 (Tenn. Sup. Ct., 1963); *Scherer & Sons, Inc.* v. *ILGWU Local 415*, — Fla. —, 142 So. 2d 290 (Fla. Sup. Ct., 1962); *Taylor* v. *Bean*, — Ark. —, 355 S. W. 2d 602 (Ark. Sup. Ct., 1962); *Carpenters' Union* v. *Briggs Constr. Co.*, 218 Ga. 742, 130 S. E. 2d 707 (Ga. Sup. Ct., 1963); *Douglas Aircraft* v. *Int. Bro. of Electrical Workers*, 247 N. C. 620, 101 S. E. 2d 800 (N. C. Sup. Ct., 1958); *Ex parte Twedell*, — Tex. —, 309 S. W. 2d 834 (Texas Sup. Ct., 1958). A few states, however, particularly Alabama and Mississippi, have evidenced notable reluctance to acknowledge Federal preemption in labor relations. The present holdings of their courts are expressed by the instant case and the case of *Alabama Highway Express, Inc.* v. *Teamsters' Local 612*, 268 Ala. 392, 108 So. 2d 350, in Alabama, and by the case of *Hattiesburg Bldg. & Trades Council* v. *Broome*, — Miss. —, 153 So. 2d 695 (Miss. Sup. Ct., 1963), in Mississippi. The reversal by this Court of the holding of the Alabama Supreme Court in *Kinard Construction Co.* v. *Building Trades Council*, 346 U. S. 933, did not lay the issue at rest in Alabama because the complaint in the *Kinard* case alleged violations of Federal law as well as state law and, probably also, because that reversal was offset to some measure by the affirmance of the Alabama Court in *United Automobile Workers* v. *Russell*, 356 U. S. 634.

The *Alabama Highway Express* decision, cited *supra*, holds that the State court has authority, in determining the extent of its own jurisdiction, to decide whether "employees" are "independent contractors" or not, irrespective of the fact that the National Labor Relations Board is granted that prerogative by Section 2(3) of the Act (29 USC 152(3)) where industries affecting commerce are con-

cerned.[7] It also holds that the State's courts have authority to enforce its Right-to-Work Statute by writ of injunction against concerted activity in labor disputes affecting commerce.[8]

Unfortunately this Court did not review the *Alabama Highway Express* ruling; and the present case apparently creates a boundless application of that decision and potentially permits all Alabama trial courts to arrogate to themselves the authority to determine the limits of state jurisdiction *ab initio* without serious regard to the applicability of previous rules of decision issued by the Board.

The decisions of the Alabama court in this case and in *Alabama Highway Express* directly conflict with the foregoing State court decisions which take heed of the admonitions repeatedly issued by this Court in its decisions in the field. e.g., state court cases cited, *supra*.

III.

The Suit Is of Major Importance "To Secure The National Rights and Uniformity of Judgments."

In 1949, former Chief Justice Vinson noted that "the purpose of the establishment of one supreme national tribunal was, in the words of John Rutledge of South Carolina, 'to secure the national rights and uniformity of Judgments.' "[9] We are not aware of any instance where national rights are in greater need of sustenance by intervention of this Court than in the field of labor relations in Alabama.

This is one of three similar cases in the Circuit Court of Mobile County, Alabama, in which injunctions are outstanding against the petitioning union.

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[7] *Contra, Marine Engineers Beneficial Assn.* v. *Interlake Steamship Co.*, 370 U. S. 173.

[8] *Contra, Construction and General Laborers' Local Union* v. *Curry, supra; Retail Clerks* v. *Schermerhorn*, second decision, *supra*.

[9] Address of the Chief Justice before the American Bar Association, September 7, 1949, 69 S. Ct. v., vi.

In the first of these cases[10] two, of three, radio technicians employed by Radio Station WLIQ in Mobile joined the union and the union requested recognition. The station (Jemison and Conwell d/b/a Jemcon Broadcasting Co.) gave notice of discharge to one of the technicians who had joined the union and refused recognition of the union until it had been designated as bargaining agent in an election. A petition for an election filed by the union was dismissed by the Director of the Board's Fifteenth Region because the station, which was not one of a chain, failed to meet the Board's $100,000 jurisdictional criteria for single stations. The remaining union technician went on strike, a peaceful picket line was established, and the union began publicizing the facts of the dispute and requesting advertisers to patronize stations with which it had contracts rather than to patronize Station WLIQ. This occurred in September, *1961.*

Jemison and Conwell procured an *ex parte* injunction against the picketing and solicitation of advertisers and the union applied to the National Labor Relations Board, pursuant to the Rules and Regulations of the Board issued to implement Sections 14(c)(1) & (2) of the Act,[11] for an Advisory Opinion as to whether the Board would assert jurisdiction over the labor dispute. (R. 13) The Board ruled that it *would* assert jurisdiction because of the impact upon interstate commerce of the secondary effects of the dispute. *In re Jemison and Conwell d/b/a Jemcon Broadcasting Co.*, AO-29, 135 NLRB 362; (R. 19).

At the interlocutory hearing, the Circuit Court, relying upon the decision of the Supreme Court of Alabama in

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[10] *Jemison and Conwell d/b/a Jemcon Broadcasting Co.* v. *IBEW Local 1264*, Case No. 56,748-McC in the Circuit Court of Mobile County, Alabama; *Jemcon Broadcasting Co., Inc.* v. *Local 1264*, Case No. 59,468-McC in the same court.

[11] *Rules and Regulations of the National Labor Relations Board, Series 8, as amended*, Subpart H, Sec. 102.98, *et seq.* (24 Federal Register 9095, Nov. 7, 1959, as amended by 26 F. R. 3885, May 4, 1961, 26 F. R. 7546, Aug. 15, 1961, 27 F. R. 2091, Mar. 3, 1962, and 27 F. R. 5094, June 1, 1962.

Alabama Highway Express, supra, held that it could determine its own jurisdiction and declined to recognize the decision of the Board in *AO-29*. This being prior to the decision of this Court in *Curry*, the case was brought on for final hearing before appeal, at which time the petition for injunction was dismissed upon a State procedural technicality in that the partnership of Jemison and Conwell had become incorporated as Jemcon Broadcasting Co., Inc., since the filing of the application for injunction.

Picketing and solicitation of advertisers was resumed and a new *ex parte* restraining order was issued. At the interlocutory hearing it was agreed by the parties to the case that the dispute was a continuation of the previous dispute and was between parties at interest and parties in privity with those in the previous case. The trial court again held that the picketing and solicitation were unlawful under Alabama law and issued an interlocutory injunction, again declining to recognize the preemptive effect of the Board decision in *AO-29*. That case was appealed by the petitioner to the Supreme Court of Alabama prior to the appeal of respondent in the instant case and remains pending in that court at this writing.[12] (Alabama imposes no restriction upon its Supreme Court as to the length of time during which decisions may remain under consideration. The *Russell* case, *supra,* remained under consideration for over two years.) The temporary injunction, meanwhile, remains in effect, and petitioner's members have been effectively deprived of their Federal rights in excess of two years.

The second of those cases is the present case.

In the third case[13] the union petitioned for an election and the Director of the Board's Fifteenth Region, after hearing, asserted jurisdiction pursuant to applicable rules

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[12] *Radio and Television Technicians Local Union 1264, IBEW, AFL-CIO* v. *Jemcon Broadcasting Co., Inc.*, 1st Div. 143, in the Supreme Court of Alabama, argued and submitted for decision, November 14, 1963.

[13] *WGOK, Inc.* v. *IBEW Local 1264*, Case No. 61395-MeC in the Circuit Court of Mobile County, Alabama.

of decision previously issued by the Board.[14] WGOK was also one of a chain of radio stations. Review upon the issue of jurisdiction was denied following appeal to the Board. At the close of the representation hearing WGOK discharged two, of four, of its radio technicians and in its appeal to the Board contended that one of the remaining technicians was supervisory and that the Board's Regional Director had erred in ordering an election in a one man unit. The Board granted review on this issue.

Both discharged employees filed unfair labor practice charges and after the Board granted review on the unit issue, the petitioning union filed unfair labor practice charges. The Board's Regional Director asserted jurisdiction on behalf of the Board, consonant with his previous election order which had been based upon applicable rules of decision of the Board, and issued complaints upon all three unfair labor practice charges. The complaints were heard by a trial examiner and are pending decision at this writing.[15]

On September 15, 1963, the petitioning union, after first giving notice thereof to Station WGOK, called a strike at the station on account of its unfair labor practices. Peaceful picketing and solicitation of advertisers was commenced and a letter was written to the judges of the Circuit Court of Mobile County, advising them of the foregoing recitations of fact and requesting a hearing before any injunctions issued inasmuch as the Board had already assumed jurisdiction over the dispute. In November, 1963, WGOK filed a damage suit in the United States District Court for the Southern District of Alabama alleging that the labor dispute affected interstate commerce and claiming damages against the union for violation of Section 303 of the Taft-Hartley Act (29 USC 187).[16]

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[14] Case No. 15-RC-2729.

[15] 15-CA-2299-1, 15-CA-2299-2 and 15-CA-2357.

[16] *WGOK, Inc. v. IBEW Local Union 1264 and IBEW, AFL-CIO*, Civil Action No. 3198-63 in the United States District Court for the Southern District of Alabama.

In January, 1963, WGOK, Inc. filed a second suit, this time in the Circuit Court of Mobile County and alleging violations of Alabama law, and an *ex parte* injunction was issued notwithstanding the letter which had been mailed to the Circuit Judges of Mobile County.[17] That case was removed to the United States District Court but has been remanded to the state court for proceeding on the injunction application.[18]

Three separate unfair labor practice charges were filed with the Board as each of the aforementioned injunctions were procured by the three employers.[19] The charge against Radio Station WLIQ (Jemison and Conwell) was filed after the Board had ruled in *AO-29* that it would assert jurisdiction over the labor dispute. The charge against Radio Station WGOK was filed after the Regional Director had asserted jurisdiction and had issued his decision and direction of election. The charges alleged that in each case, in circumstances clearly indicating that the Board would assert jurisdiction over the dispute, the employer had wilfully procured injunctions for the purpose of interfering with employees' rights under Section 7 of the Act to engage in concerted activity. It was urged in support of each charge that the injunction interfered with the exercise of the Board's statutory jurisdiction and that the acts of each employer violated Section 8(a)(1) of the Act. Because of the decision of the Board in *Clyde Taylor Company*, 127 NLRB 103, in which it held that it would not find that the use of State court processes constitutes an unfair labor practice, the Regional Director declined to issue a complaint in each of the cases. Appeals to the General Counsel of the Board upon each such refusal was denied, so that

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[17] *WGOK* v. *IBEW Local Union 1264, et al*, Civil Action No. 3215-64 in the Circuit Court of Mobile County, Alabama.

[18] See in this connection *Morton* v. *Teamsters' Union* 320 F 2d 505 (CA-6, 1963), cert. granted, Dec. 9, 1963, now pending in this Court.

[19] *In re Jemcon Broadcasting Co., Inc.*, 15-CA-2279; *In re Broadcast Service of Mobile, Inc.*, 15-CA-2292; *In re WGOK, Inc.*, 15-CA-2415.

no recourse is available to petitioners in the Federal administrative procedure.

The State court injunctions which have been issued in these three cases, notwithstanding repeated claims of Federal preemption, have totally and continuously frustrated Federal labor relations policy and the Federally regulated rights of the members of the petitioning union since September, 1961. "Relinquishment of this exercise of State court jurisdiction is essential 'if the danger of state interference with national policy is to be averted.' "[20]

CONCLUSION

For each of the reasons above stated, it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

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Counsel for Petitioners

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. ——

RADIO AND TELEVISION BROADCAST TECHNICIANS LOCAL UNION 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL,

Petitioners,

VS.

BROADCAST SERVICE OF MOBILE, INC.,

Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

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Atlanta, Georgia 30303

PIERRE PELHAM
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Counsel for Petitioners.

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VS.

BROADCAST SERVICE OF MOBILE, INC.,

Respondent.

APPENDIX TO PETITION OF A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

APPENDIX A

PART A

CONSTITUTIONAL PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES

Art. I, Sec. 8, Clauses (3) and (18):
Art. VI, Clause (2):

"Art. I, Sec. 8 (Power of Congress). The Congress shall have Power —

"(3). To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

• • • • • • • • • • •

"(18). To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

"Art. VI. Clause 2. Supreme Law.—

"(2). This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

NATIONAL LABOR RELATIONS ACT, ETC.

PART B

STATUTES INVOLVED

LABOR MANAGEMENT RELATIONS ACT, 1947,
and
NATIONAL LABOR RELATIONS ACT, AS AMENDED
61 Stat. 140 ff, 73 Stat. 541 ff, 29 U.S.C.

Section 157, Section 158 (b) and (c), Section 160 (a), (c), (k) and (l), Section 164:

"Sec. 157. • • •

"Employees shall have the right to self-organize, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)."

"Sec. 158. . . .

"(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a);

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8 (e);

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been

certified as the representative of such employees under the provisions of section 9: Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of an employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act: Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

(5) to require of employees covered by an agreement authorized under subsection (a) (3) the payment,

as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed; and

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act,

(B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted, or

(C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: Provided, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9(c)(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: Provided further, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity

for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Nothing in the paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8(b).

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

"Sec. 164. . . .

"(c)(1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: Provided, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

(2) Nothing in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction."

OPINION AND JUDGMENT OF ALABAMA SUPREME COURT

APPENDIX B

EXCERPTS FROM PLEA TO THE JURISDICTION

Filed September 10, 1962
(R. 7)

PLEA TO THE JURISDICTION

Come the Respondents . . . and show the Court the following facts:

1. Respondent Local 1264. . . . is a labor organization within the meaning of the National Labor Relations Act, as amended (29 USC, Sec. 151, *et seq*). . . .

• • • • • • • • • • •

4. One of the radio stations with which the Respondent had in effect a collective bargaining agreement was WAIP operating at Prichard, Alabama and broadcasting throughout the Mobile Area. The physical facilities of such station were purchased by Complainant and Complainant began operation on August 1, 1962. As is alleged in Complainant's Bill for Injunction, Complainant began broadcasting with a temporary employee whose hours of work, wages and conditions of services were substantially below those established as the standard in collective bargaining agreements in effect with Respondent Local 1264 and other radio stations in the Mobile Area.

5. Such operation of Complainant constituted unfair and disadvantageous competition with other radio stations in the Mobile area who operate under collective bargaining agreements and therefore threatens to undermine the wages, hours, conditions of employment and high working standards which have been attained by the members of Local 1264 through long years of diligent effort.

6. On account of such substandard conditions and unfair competition and in order to advise the public and persons

who might do business with Complainant by advertising on Station WSIM thereof, Respondent Union stationed two pickets at the premises of Complainant occupied by the studio of Radio Station WSIM on August 10, 1962, which two pickets walked back and forth carrying signs which advised that the station was operating under non-union conditions. Such picketing was also conducted on August 11 and on weekdays from August 13 through the present except on Labor Day. Such picketing is conducted two hours in the morning and two hours in the afternoon at normal times of shift change.

7. The members of Respondent Union have contacted persons and businesses advertising over Station WSIM and have advised such persons that Radio Station WSIM is being operated under substandard conditions without a collective bargaining agreement in effect and have requested such advertisers to patronize radio stations who adhere to Union standards rather than Radio Station WSIM. A list of advertisers contacted is attached hereto and made a part hereof as Exhibit 1.

8. Respondent further shows that such advertisers each purchase, directly and indirectly, goods which are shipped in interstate commerce and some of such advertisers ship goods in interstate commerce. The combined purchases and shipments of goods in interstate commerce of such advertisers annually far exceed $50,000 in value. Further, Delchamps is a retail grocery chain, the annual dollar volume of sales of which far exceeds $500,000.

9. The activities of Respondent which are complained of by the Complainant in its bill for injunction therefore substantially affect interstate commerce, and the National Labor Relations Board has exclusive jurisdiction over the provisions of the National Labor Relations Act, as amended, to afford any relief to Complainant to which it is entitled under the provisions of such law. Attached hereto and made a part hereof is a petition for an Advisory Opinion addressed to the National Labor Relations Board in the case

of Local Union 1264, IBEW and Jemcon Broadcasting Company, and also copy of the decision of the National Labor Relations Board rendered upon such petition holding, in a case substantially identical to the present, that it had jurisdiction over the dispute between respondent and the complainant, which decision is direct authority that the National Labor Relations Board has jurisdiction to adjudicate the allegations contained in Complainant's bill for injunction.

10. Complainant's radio broadcast business causes Complainant to be engaged in interstate commerce and Complainant is an instrumentality of commerce whose business affects interstate commerce within the meaning of the National Labor Relations Act and whose labor relations are subject to the exclusive jurisdiction of the National Labor Relations Board.

11. Respondents further show that their activities constitute concerted activity for their mutual aid and protection the right to engage in which is guaranteed and protected by the National Labor Relations Act (29 USC, Section 157).

. . . . . .

13. For this Court to assume jurisdiction to grant relief on Complainant's bill for injunction would be unconstitutional and invalid and in derogation of the authority granted to the Congress of the United States by Article I, Section 8, Paragraph 3 of the Constitution of the United States to regulate interstate commerce, and of Article VI, Paragraph 2, of the Constitution of the United States providing that the Constitution and laws of the United States are the supreme law of the law and anything in the Constitution or laws of any State to the contrary notwithstanding because pursuant to such power the Congress has assumed jurisdiction over the subject matter of the bill for injunction and has empowered the National Labor Relations Board to grant relief with respect thereto by enacting the National Labor Relations Act, as amended (29 USC, Section 151, et seq.).

OPINION AND JUDGMENT OF ALABAMA SUPREME COURT

APPENDIX B

EXCERPTS FROM AMENDMENT TO PLEA TO THE JURISDICTION

Filed September 12, 1962
(R. 81)

Respondents amend their Pleas to the Jurisdiction by adding a paragraph. . . .

4(a). The Complainant, Broadcast Service of Mobile, Inc., which operates Radio Station WSIM, is only one of a group of four radio stations known as Holt Broadcasting Service and the headquarters of said Holt Broadcasting Service is located in Hattiesburg, Mississippi. The other stations composing the Holt Broadcasting Service are WHHY, in Montgomery, Alabama; WHSY in Hattiesburg, Mississippi and WHNY in McComb, Mississippi. All four of these stations including WSIM at Prichard, Alabama, are licenses and regulated by the Federal Communications Commission; there exists common ownership over all four stations with one Charles W. Holt controlling the majority interest in all four stations; there is common management of all four stations with Charles W. Holt being the executive head of all four stations; there also exists a common personnel and labor relations policy for all four stations. Therefore the Complainant, Broadcast Service of Mobile, Inc., operator of Station WSIM, is an integral part of an integrated operation of four radio stations located in Alabama and Mississippi and known as Holt Broadcasting Service, and under the National Labor Relations Act, as amended, the volume of business done at each of the aforesaid four radio stations will be considered by the Board in asserting jurisdiction over the labor dispute which is the subject-matter of Complainant's bill of complaint, and the revenues received by Holt Broadcasting Service from the

operation of the aforesaid stations greatly exceed $100,000.00 per year.

• • • • • • • • • • •

MOTION FOR REHEARING AND MEMORANDUM IN SUPPORT THEREOF

Filed December 20, 1963
Record 428-432

Comes the appellee and requests that the Court rehear and reconsider its decision issued December 12, 1963, in the within styled case and that upon such reconsideration the decision of this Court be vacated and a new decision and judgment be issued affirming the judgment of the Court below. For grounds of such motion appellee shows that the Court erred (1) in its analysis of the pleadings in the case, (2) in restricting its consideration to "the face of the pleadings" and in failing to consider the evidence before the Court below relative to the jurisdictional issue, (3) in failing to find that controlling decisions of the National Labor Relations Board applied to the facts in this case demonstrate that the Board would assert jurisdiction to adjudicate the subject matter of appelant's complaint, and (4) in failing to find that, in any event, under the pleadings and evidence in this record it is arguable that the National Labor Relations Board would assert jurisdiction over the controversy and in failing to yield to the "primary competence" of the Board in such circumstances.

On Page 6 of its decision the Court correctly states appellee's contentions that (1) controlling decisions of the National Labor Relations Board hold that business of the appellant affects interstate commerce to the extent that the Board would assert its exclusive authority to adjudicate the legalities and illegalities of the dispute and (2) that, in any event, this Court must yield to the jurisdiction of the Board when it is "arguable" that the Board would assert jurisdiction. The Court, however, restricts its consideration to the second of these contentions and seems to

overlook entirely the several Board decisions cited by appellee which are applicable to commonly owned and controlled financial enterprises.

In its decision the Court cites and relies exclusively upon the ruling of the Board in *Raritan Volley Broadcasting Co., Inc. and American Federation of Television and Radio Artists,* 122 NLRB #16, which is applicable to *single* radio stations, as distinguishable from *multiple-enterprise* chains of radio stations; and the Court holds that, because appellee did not rely and plead the single station standard in its plea to the jurisdiction, the Court will look no further.

In its plea to the jurisdiction appellee alleged (R. 9) that the activities of appellee complained of by appellant substantially affect interstate commerce and (R. 81) that the appellant is one of four commonly owned and controlled radio stations of the Holt Broadcasting Service, having a common labor relations policy, and that the revenues received by the entire financial enterprise of the Holt Broadcasting Service from the operation of the four station chain greatly exceed $100,000 per year. These allegations on the face of the pleadings assert facts which are born out in proof and which demonstrate that the National Labor Relations Board would assert jurisdiction over *this* controversy. The allegations of the plea to the jurisdiction therefore exclude every condition under which jurisdiction lawfully may be exercised by the Alabama Courts.

The evidence in the record which leads to the necessary conclusion that the four stations are a single financial enterprise in the consideration of the National Labor Relations Board are fully detailed in appellee's original brief. In cases such as the present the Board considers the substantiality of the effect upon interstate commerce of the entire financial enterprise rather than that of a single member of the chain.

Major Service Co., 129 NLRB 794;
Orkin Exterminating Co., 115 NLRB 622;
Crenshaws, Inc., 115 NLRB 1374;

Southeastern Concrete Products, 127 NLRB No. 118;
Alton Myers, 127 NLRB No. 138;
Central Dairy Products, 114 NLRB 1189;
Wash Well No. 2, Inc., 139 NLRB No. 37;
P-M Garages, Inc., 139 NLRB No. 84;
Sakrete of Northern California, Inc., 137 NLRB No. 131;
Perfect T-V, Inc., 134 NLRB 575;
Pine State Creamery Co., Inc., 130 NLRB 892;
Quality Coal Corp., 139 NLRB No. 6;
Corfu Mfg. Co., 48 LRRM 1584;
Hamilton Bros., Inc., 130 NLRB 233;
Alamo-Brown Beef Co., 128 NLRB 32;
Chicago Northside Newspapers, 124 NLRB 254;
Edward Small Productions, Inc., 127 NLRB 283;
Alpha Corp., 128 NLRB 309;
Checker Cab Co., 141 NLRB No. 64;
NLRB v. Sightseeing Guides Union, 310 F 2d 40.

Even if this Court did not undertake on this record to overrule *Alabama Highway Express, Inc. v. Teamster Local No. 612*, 268 Ala 392, 108 So 2d 350, consideration of the above cited Labor Board authorities and the application of those authorities to the pleadings and evidence in this case require affirmance under the rule annunciated in *Alabama Highway Express.*

MOTION FOR REHEARING

We therefore urge that for each of the reasons herein assigned the Court should reconsider its decision of December 12, and issue a new opinion and judgment affirming the judgment of the Court below.

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Annex
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Atlanta, Ga. 30303
Phone: 523-2525

Respectfully submitted,

PIERRE PELHAM
ADAIR, GOLDTHWAITE & STANFORD
/s/ By J. R. GOLDTHWAITE, JR.

CERTIFICATE OF SERVICE

This will certify that copy of the above and foregoing motion for rehearing has this day been served upon counsel for the appellant by mailing the same by first class United States mail.

This 19 day of December, 1963.

J. R. GOLDTHWAITE, JR.

APPENDIX C

PART A

OPINION OF THE TRIAL COURT

Entered September 13, 1962
(R. 83)

DECREE

This cause coming to be heard on the complainant's motion for a temporary injunction, upon the amended bill of complaint, affidavits submitted by the complainant and the respondent and Exhibit 1 of respondents' plea to the jurisdiction; and upon consideration thereof the Court finds that:

1. The picketing conducted by the respondent union and its agents is entirely peaceful and that there is no threat or apprehension of physical violence;

2. The complainant has five employees none of whom belong to or desire the respondent union to represent them;

3. The purpose of the respondent union's picketing, respondent union's letters addressed to "All Merchants of the Mobile-Pritchard Area" and personal contacts by representatives of respondent union with advertisers over complainant's Radio Station is to require complainant to recognize the respondent union as the bargaining agent of complainant's employees or to require the complainant to em-

ploy a member of the respondent union as a radio engineer at complainant's station located in Prichard, Alabama.

The Court further finds that each of the objectives of the picketing is contrary to the public policy of the State of Alabama as expressed in the Alabama Right to Work Law and the common law of the State of Alabama.

The Court further finds that the picketing, personal solicitation and solicitation by letter is causing irreparable damage to the complainant and the Court being of the opinion that the complainant's application for a temporary writ of injunction as prayed for in the amended bill of complaint should be granted.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court that upon the complainant entering into a good and sufficient bond, conditioned as provided by law, in the sum of ONE THOUSAND AND NO/100ths ($1,000.00) DOLLARS, same to be approved by the Register of this Court, that the Register issue a temporary writ of injunction as prayed for in the amended bill in this cause.

DONE and ORDERED, this 13th day of September, 1962.

/s/ Joseph M. Hocklander
Circuit Judge in Equity Sitting

APPENDIX C

PART B

OPINION OF THE TRIAL COURT

Entered May 23, 1963

ORDER GRANTING MOTION TO DISSOLVE TEMPORARY INJUNCTION AND DISMISSING CAUSE

This cause being regularly set down for hearing and being submitted for decree on the pleadings and testimony as heard in open Court and the Court having duly con-

sidered the same is of the opinion that the motion to dissolve the temporary injunction should be granted on the grounds that the Court's jurisdiction was preempted by the National Labor Relations Act.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court that the motion to dissolve the temporary injunction heretofore issued in this cause be, and the same hereby is, granted, and said injunction be, and hereby is, dissolved.

It is further ORDERED and DECREED by the Court that the relief as prayed for in the Bill of Complaint as amended be, and hereby is, denied, and that the Complainant be, and hereby is, taxed with the costs of this cause, for which let execution issue.

Dated, May 23rd, 1963.

/s/ JOSEPH M. HOCKLANDER
Judge

APPENDIX C

PART C

OPINION OF THE SUPREME COURT OF ALABAMA

Entered December 12, 1963
R. 414 - 426)

SIMPSON, *Justice.*

This is an appeal from a final decree of the Circuit Court of Mobile County, Alabama, in Equity, dissolving a temporary injunction theretofore in effect and dismissing the cause on the ground that the court's jurisdiction was preempted by the National Labor Relations Act.

The action was commenced on September 4, 1962, by apppellant by verified bill of complaint, which, among other things, prayed for a temporary restraining order, enjoining Local 1264, International Brotherhood of Electrical Workers, et al., from interfering with the conduct of appellant's business.

Appellant on February 10, 1963, filed a verified amended complaint alleging that the appellant, prior to August 1, 1962, purchased certain assets of Radio Station WAIP, Prichard, Alabama, and commenced operation of the station with a full complement of personnel. Around August 3, 1962, appellee demanded that appellant employ David Fridge as radio engineer and demanded that appellant recognize appellee as the collective bargaining representative of appellant's employees although none of the employees of appellant had designated the appellee as his collective bargaining representative. Appellant refused to terminate any of its employees in order to employ Fridge. On August 10, 1962, appellee began picketing appellant's office in Prichard, Alabama; none of the person who picketed appellant had ever been employees of appellant. Appellee "since August 10, 1962, has by picketing, letters addressed to persons, firms and corporations and by personal contact sought to effect a boycott of complainant and to cause persons doing business with complainant to refrain from doing business with complainant." Since August 10, 1962, appellee by letter and personal contact induced customers of appellant to cancel advertising agreements with appellant. The object of the picketing and boycotting was to force and require appellant to bargain with appellee although appellee had not been selected by any of appellant's employees for the purpose of collective bargaining; to force appellant to violate the Alabama Right to Work Act; to force appellant's employees to join the appellee; to force appellant to employ members of the appellee; to ruin the business of appellant and to require persons advertising over appellant's radio station to breach their advertising contracts with appellant. The complaint alleges that irreparable damage would be caused to appellant unless the picketing and related conduct is enjoined.

Appellee filed a plea in abatement to the jurisdiction of the court on the ground that the National Labor Relations Board had exclusive jurisdiction over the matters alleged in the complaint. The plea to the jurisdiction admitted that

the appellee had by letter and by personal contact requested advertisers in Mobile, Alabama, to advertise over radio stations other than WBIM. After a hearing in open court on September 13, 1962, the trial court issued a temporary injunction upon the amended bill of complaint and affidavits submitted by the appellant and appellee. In its temporary injuction the court found:

> "1. The picketing conducted by the respondent union and its agents is entirely peaceful and that there is no threat or apprehension of physical violence;
>
> "2. The complainant has five employees none of whom belong to or desire the respondent union to represent them;
>
> "3. The purpose of the respondent union's picketing, respondent union's letters addressed to 'All Merchants of the Mobile-Prichard Area' and personal contacts by representatives of the respondent union with advertisers over complainant's Radio Station is to require complainant to recognize the respondent union as the bargaining agent of complainant's employees or to require the complainant to employ a member of the respondent union as a radio engineer at complainant's station located in Prichard, Alabama.
>
> "The Court further finds that each of the objectives of the picketing is contrary to the public policy of the State of Alabama as expressed in the Alabama Right to Work Law and the common law of the State of Alabama.
>
> "The Court further finds that the picketing, personal solicitation and solicitation by letter is causing irreparable damage to the complainant and the Court being of the opinion that the complainant's application for a temporary writ of injunction as prayed for in the amended bill of complaint should be granted."

In its answer to the amended complaint the appellee admitted that respondent since August 10, 1962, had by picketing, letters addressed to persons, firms and corporations and by personal contact sought to effect a boycott of complainant and to cause persons doing business with or desiring to do business with complainant to cease doing busi-

ness with complainant or to refrain from doing business with complainant.

Appellee's answer further admitted that appellee by personal contact and by mail contacted advertiser of WSIM for the purpose of inducing them to cease advertising over radio station WSIM but sought to justify the action on the ground that it was protected in its activity under the National Labor Relations Act and the First and Fourteenth Amendments to the Constitution of the United States.

On May 23, 1963, after hearing in open court, the court entered an order dissolving the temporary injunction and dismissing the cause on the ground that jurisdiction of the Circuit Court of Mobile County, Alabama, was pre-empted by the National Labor Relations Act. This appeal followed.

While there are several assignments of error, only one question is presented: Did the Circuit Court err in determining that it did not have jurisdiction of the subject matter?

Appellee argues that all of the acts and conduct alleged in the complaint are subject matter regulated by the National Labor Relations Act, as amended, and as to which the National Labor Relations Board has exclusive authority to adjudicate legalities and illegalities if the dispute affects interstate commerce. It is further argued that state courts are without authority to adjudicate the merits of a labor dispute as to which it is arguable that the Labor Relations Board would assert jurisdiction and that each case must be first submitted to that Board to determine in the first instance whether it will assert jurisdiction.

Appellant, on the other hand, argues that the entire field of labor relations has not been pre-empted by federal legislation; that there remains a substantial area in which the states may act, and that in fact the activity complained of here has been expressly left to the states by Congress through the enactment of an amendment to the Labor Management Relations Act of 1947, as amended in 1959 (29 U.S. Code Ann., §164, [c] [1] and [2]), providing:

Section 164 (c) (1):

"The Board, in its discretion, *may, by rule of decision* or by published rules adopted pursuant to the Administrative Procedure Act, *decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction;* Provided, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959."

[Emphasis supplied.]

Section 164 (c) (2):

"Nothing in this subchapter shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection to assert jurisdiction."

We are constrained to agree with appellant. It seems to us that the National Labor Relations Board has, in the words of the above amendment, "declined to assert jurisdiction over any labor dispute involving" the class or category of employers to which appellant belongs, thus leaving such disputes within the jurisdiction of the state court. In support of this belief, we quote the following language from *Raritan Valley Broadcasting Co., Inc.* v. *American Federation of Television & Radio Artists, New York Local (AFL-CIO)*, 122 NLRB, No. 16, Case no. 22-RC-190, which opinion was rendered by the National Labor Relations Board after a hearing before the full Board on November 14, 1958:

"Ever since the enactment of the National Labor Relations Act in 1935, the Board has consistently held to the position that it better effectuates the policies of the Act and promotes the prompt handling of cases not to exercise its jurisdiction to the fullest extent possible under the authority delegated to it by Congress. For the first 15 years the Board exercised its

discretion in this area on a case-by-case basis. In 1950 the Board first adopted certain jurisdictional standards designed to aid it in determining where to draw the dividing line between exercised and unexercised jurisdiction. In 1954 the Board re-examined its jurisdictional policies in the light of its experience under the 1950 standards and revised its jurisdictional standards. At that time the Board noted that 'further changes in circumstances may again require future alterations of our determinations one way or anothers'. Consistent with this practice of periodic review of its jurisdictional policies and a direct consequence of the Supreme Court's decision in P. S. Guss, d/b/a Photo Sound Products v. Utah Labor Relations denying to the States authority to assort jurisdiction over enterprises as to which the Board declines to exercise its statutory jurisdiction, the Board re-examined its existing jurisdictional policies and the standards through which such policies were implemented. As a result the Board determined to revise its jurisdictional policies at this time so that more individuals, labor organizations and employers may invoke the rights and protection afforded by the statute. In Siemens Mailing Service the Board fully set forth the general considerations which persuaded it that this could best be accomplished by the utilization of revised jurisdictional standards as an administrative aid in making its jurisdictional determinations. The Board has chosen this case to set forth the revised standard to be applied to enterprises operating communication systems.

"The Board has decided that it will better effectuate the policies of the Act to assert jurisdiction in all future and pending cases involving enterprises engaged in the operation of radio or television broadcasting stations or telephone or telegraph systems which do a gross volume of business of at least $100,000 per annum.

"In adopting this standard the Board has given due consideration to all relevant budgetary factors bearing on its capability to handle an increased caseload, and to comments and briefs of interested parties received in response to its invitation contained in the Board's July 22, 1958, press announcement of its proposed changes in jurisdictional policies. It is the Board's opinion in the light of its current budgetary limitations

> and the volume of cases which may be expected under its other standards, the $100,000 gross volume of business standard will extend the Board's jurisdiction over communications systems to the maximum possible extent at this time and will reasonably ensure that the Board will assert jurisdiction over all labor disputes involving such enterprises which tend to exert a pronounced impact on commerce."

The record clearly shows, and it is apparently undisputed, that appellant's gross volume of business per annum is considerably below the $100,000 standard established by the Board. Congress saw fit to amend the Labor Management Relations Act as set forth above following the pronouncement of the Supreme Court of the United States in the *Guss* case, supra.

Appellee argues that affiliated enterprises of the majority and controlling stockholders of appellant should be considered by the Board for determining whether the jurisdictional standards are met and insists that the court must base its jurisdiction on a consideration of what the Board would do under the facts of this case, and that in any event the case must first be submitted to that body. We cannot agree. We have recently stated that:

> "• • • the authority is clear to the effect that every court of general jurisdiction has judicial power to determine the question of its own jurisdiction."—See *Alabama Express, Inc. v. Local 612, etc.*, 268 Ala. 392, 397, 108 So. 2d 350, and cases there cited.

It is equally clear that the law of this state is settled to the effect that every reasonable intendment, not contradicted by the face of the pleadings, will be made in favor of the jurisdiction of the Circuit Court and plea to the jurisdiction of the Circuit Court must allege facts which exclude every condition under which jurisdiction may be lawfully exercised. *Atlantic Coast Line R. Co. v. Ballard* 202 Ala. 354, 80 So. 436. Here the appellee's plea failed to allege that the appellant's gross business exceeded $100,000 per annum which, if proven, would exclude the court's jurisdiction under § 164(c)(1), Labor Management Relations Act

of 1947, as amended, supra. On this basis we believe the learned trial court erred in dismissing the temporary injunction on the ground that the court's jurisdiction was pre-empted.

Appellee argues that *Alabama Highway Express, Inc. v. Local 612*, etc., supra, must be overruled in light of the pronouncement of the Supreme Court of the United States in *Construction and General Laborers Union v. Curry*, 371 U.S. 544.

Inasmuch as we believe that the jurisdiction of the Circuit Court in this case is preserved by § 164(c)(1), Labor Management Relations Act. supra, and by the express declination of the National Labor Relations Board to assert its jurisdiction in cases involving small radio stations, of which appellant is concededly one, we can see no need at this time to determine whether the court's jurisdiction would have been pre-empted had the appellant sought the court's jurisdiction only on the basis of facts claimed to have been in violation of this state's Right To Work Law.

It should be made very clear that we have made no attempt to decide the merits of this case, but simply hold that the trial court erred in its determination under the undisputed facts that it had no jurisdiction over the subject matter involved.

REVERSED AND REMANDED, WITH DIRECTIONS THAT THE TEMPORARY RESTRAINING ORDER BE REINSTATED.

Livingston, C. J., Merrill and Hazwood, J. J., concur.

APPENDIX C

PART D

Judgment Entered Thursday, December 12, 1963
(R. 427)

THE SUPREME COURT OF ALABAMA—THURSDAY, DECEMBER 12, 1963

THE COURT MET PURSUANT TO ADJOURNMENT

PRESENT: ALL THE JUSTICES
1st Div. 163.

BROADCAST SERVICE OF MOBILE, INC.

vs.

LOCAL 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, ET AL.

MOBILE CIRCUIT COURT, IN EQUITY

Come the parties by attorneys and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is manifest error.

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED that the appellees, Local 1264, International Brotherhood of Electrical Workers and William Rayburn, David Fridge and H. D. Smith, pay the costs accrueing on said appeal in this Court and in the Court below, for which costs let execution issue.

APENDIX C

PART E

ORDER ON MOTION FOR REHEARING

Entered Thursday, January 16, 1964.
(R. 433)

THE SUPREME COURT OF ALABAMA—THURSDAY, JANUARY 16, 1964

THE COURT MET PURSUANT TO ADJOURNMENT

PRESENT: ALL THE JUSTICES
1st Div. 163

BROADCAST SERVICE OF MOBILE, INC.

vs.

LOCAL 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, ET AL.

MOBILE CIRCUIT COURT, IN EQUITY

It Is Ordered that the application for rehearing filed on December 20, 1963, be and the same is hereby overruled.

No Opinion Written on Rehearing.

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JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1963

No. ~~1066~~ 61

RADIO AND TELEVISION BROADCAST TECHNICIANS LOCAL UNION 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL.,

Petitioners,

versus

BROADCAST SERVICE OF MOBILE, INC.,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963.

No. 1006.

RADIO AND TELEVISION BROADCAST TECHNICIANS LOCAL UNION 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL.,

Petitioners,

versus

BROADCAST SERVICE OF MOBILE, INC.,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

I.

OPINIONS BELOW.

In addition to the opinions specified in the petition, the Circuit Court of Mobile County, Alabama rendered a final judgment on March 6, 1964. which is printed in Appendix A hereof.

II.

QUESTIONS PRESENTED FOR REVIEW.

1. Does a state court have jurisdiction to determine its jurisdiction over an action for an injunction and damages brought by an employer pursuant to an Act of Congress providing that nothing in the National Labor Relations Act shall be deemed to prevent or bar state courts from assuming and asserting jurisdiction over any labor dispute involving any class of employers over whom the National Labor Relations Board has declined to assert jurisdiction?

2. May a state court require a party to follow a uniform rule of pleading requiring the pleading of facts to support a plea in abatement to the jurisdiction of the court where the plea attempts to allege federal preemption?

3. May a state court make a factual determination of whether a particular employer belongs to "any class or category of employers" over which the National Labor Relations Board has declined to assert jurisdiction?

III.

STATUTES INVOLVED.

Labor Management Relations Act of 1947, as amended:

Section 14(c)(1):

The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to

the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category or employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: Provided, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

Section 14(c)(2):

Nothing in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.

IV.

STATEMENT OF THE CASE.

A.

The Dispute.

Broadcast Service of Mobile, Inc., respondent, herein called WSIM, purchased certain assets of radio station WAIP prior to August 1, 1962 (R 37, 88). David Fridge, an employee of WAIP, was terminated by WAIP on July 31, 1962 (R 168, 209-10). Fridge executed a release to WAIP for any compensation that might be due Fridge under any contract of employment (R 209-10).

WSIM employed John Hale as its manager (R 103). Hale was in charge of the operations of WSIM (R 119, 130-1, 144, 157, 197, 327, 328, 339). Hale selected the employees of WSIM (R 130-1, 144, 197). Hale determined not to employ Fridge because of Fridge's poor work record at WAIP (R 143, 156, 157).

WSIM commenced broadcasting on August 1, 1962 (R 37, 88, 168).

On August 3, 1962, Fridge and the business agent of Local 1264, International Brotherhood of Electrical Workers, petitioners, herein called Local 1264, informed Hale that Local 1264 had a collective bargaining agreement with WSIM, and that as far as Local 1264 was concerned, Fridge was an employee of WSIM, and that since Fridge was present, Local 1264 was going to let WSIM use him (R 147-8, 282-3, 285). Hale informed Local 1264's representative that he, Hale, did not understand the legal implications concerning Fridge and the alleged contract (R 148, 174).

Thereafter, Local 1264 admitted that it did not have a collective bargaining agreement with WSIM, and requested that WSIM recognize Local 1264 and negotiate a collective bargaining agreement with Local 1264 (R 151, 220). Local 1264 did not at any time claim to represent any employee of WSIM (R 152, 287). Local 1264's avowed intent was to require WSIM to employ Fridge; Local 1264 was unconcerned with the employee Fridge was to replace (R 152-3).

WSIM did not recognize Local 1264 as the collective bargaining representative of WSIM's employees (R 286). WSIM did not employ Fridge (R 143).

On August 10, 1962, Local 1264 commenced picketing WSIM's office (R 37, 38, 89). None of the persons who picketed WSIM was or had ever been an employee of WSIM (R 38, 90). Local 1264 admitted that the picketing and other activity was for the purpose of causing WSIM to employ Fridge and to cause WSIM to sign a collective bargaining agreement with Local 1264, although Local 1264 never claimed to represent any employee of WSIM (R 238, 243, 279, 287).

Local 1264's answer admitted that Local 1264 "since August 10, 1962, has by picketing, letters addressed to persons, firms and corporations and by personal contact sought to effect a boycott of complainant and to cause persons doing business with or desiring to do business with complainant to cease doing business with complainant or to refrain from doing business with complainant" (R 38, 90, 213, 214, 288). A substantial number of persons who had formerly advertised over WSIM ceased advertising over WSIM immediately after a personal visit by a representative of Local 1264 or after the receipt of a boycott letter from Local 1264 (R 312, 313, 320, 342, 343, 344).

B.

The Business of WSIM.

WSIM's gross income is substantially less than $60,000.00 per annum (R 342). For the period of August

1, 1962, through March 31, 1963, WSIM's total sales were approximately $30,000.00 (R 342).

Holt owns stock in and is an officer of four corporations, each of which operates a radio station (R 323-326, 347). The stations are located in Mobile, Alabama; Montgomery, Alabama; McComb, Mississippi; and Hattiesburg, Mississippi (R 324-5). Holt owns one hundred per cent of the stock of Air Enterprizes, Inc., a service organization, which performs accounting services for the four corporations (R 323). Each corporation has its own manager who operates the corporation's radio station (R 110, 118, 130, 131, 144, 157, 296, 297, 304, 327). The manager selects and discharges his own personnel (R 144, 197, 296, 305, 327, 328, 339). The manager sets the wages for his personnel (R 144, 296, 328). The manager determines when his employees will get a vacation or days off (R 296). Wages are not uniform among the several corporations (R 328). Each corporation maintains its own separate set of books in the city where it operates its radio station (R 115, 116, 327). Each corporation maintains a separate payroll, (R 327) files separate federal income and social security tax returns. (R 326, 327) and each files separate reports with the Federal Communications Commission (R 326). Each corporation's funds are kept separately (R 326). Each corporation has a bank account in the city where it operates its radio station and each corporation also has a separate account in Hattiesburg, Mississippi (R 326). Each station manager makes his own purchases and approves his own bills for payment (R 327). Air Enterprizes, Inc., performs accounting and auditing

services for the various corporations (R 338). Each operating corporation pays its proportionate share of the expenses of Air Enterprizes, Inc. (R 328). Some of the stations have national advertising representatives and some have none (R 339). All advertising sold by WSIM was sold in and about Prichard, Alabama (R 346). There has been no national advertising over WSIM (R 346). One of the stations operated by the separate corporations is an affiliate of the American Broadcasting Company; one is an affiliate of the National Broadcasting Company and two have no affiliation (R 346). Holt and Lightsey visit various stations periodically (R 328). They visit some stations more than others (R 328).

The Trial Judge stated of the testimony of the station manager:

> I think what this witness has said is that he runs that station and that is his job and nobody tells him insofar as details are concerned how to run it, and I don't imagine anybody is going to as long as he's doing a good job of making money, but I imagine if you start losing money then somebody is going to get concerned. Is that about what you said?

(R 304) In confirming the Trial Judge's statement the station manager testified:

> MR. GIVENS:
>
> I do the hiring and firing, I don't ask nobody who I hire; who I fire. I do it for the purpose of making money, which I haven't been too successful at for a number of reasons. It's why we are in

business. If I have to call Bob or anybody else—if I had to call even you in town here before I did anything, what would they have me there for? And, if things come up I handle them myself—I mean, that is what I'm there for.

THE COURT:

You are not trying to say that your orders cannot be countermanded?

MR. GIVENS:

No, sir.

THE COURT:

You are just saying that the way things are going now nobody has bothered you. They've told you to run the station.

MR. GIVENS:

Yes, sir.

(R 305)

Each station manager has complete responsibility for the day to day operation of his station (R 304, 305, 327).

V.

ARGUMENT.

A.

The Decision Below is Clearly Correct.

Prior to 1959, this Court in *Garner v. Teamsters Local 776*, 1953, 346 U.S. 485, 98 L. Ed. 228, held that the National Labor Relations Act conferred exclusive jurisdiction on the National Labor Relations Board, with

certain exceptions, over all labor disputes that affected interstate commerce.

The National Labor Relations Board had prior to 1959 declined to assert its full jurisdiction over many employers because of monetary or political reasons. In *Guss v. Utah Labor Relations Board*, 1957, 353 U.S. 1, 1 L. Ed. 2d 601, this Court held that the National Labor Relations Act pre-empted the jurisdiction of state courts over an employer whose operations affected interstate commerce and thus was within the jurisdiction of the National Labor Relations Board even where the operations of the employer were predominantly local and the National Labor Relations Board had declined to exercise its jurisdiction.

The *Guss* case and the National Labor Relations Board created a vast "no man's land". This "no man's land" consisted of the employers over whom the National Labor Relations Board refused to assert jurisdiction and over whom the *Guss* case prevented state courts from asserting jurisdiction. This "no man's land" was enlarged by this Court's decision that state courts had no jurisdiction if the activity in question was "arguably" within the jurisdiction of the National Labor Relations Board. *San Diego Building Trades Council v. Garmon*, April, 1959, 359 U.S. 326, 3 L. Ed. 2d 775.

It was, and is, impracticable for an employer to initially submit his cause to the National Labor Relations Board where there is a doubt as to whether the

National Labor Relations Board will assert jurisdiction as the union is likely to achieve its objective before the National Labor Relations Board acts. *Cf. Lodge No. 12, District No. 37, International Association of Machinists v. Cameron Iron Works Inc.*, 5 Cir., 1958, 257 F.2d 467, cert. deni. 358 U.S. 880, 3 L. Ed. 2d 110 at 257 F.2d 474 where the court held with respect to the National Labor Relations Board:

> . . . the parties should not be forced to . . . be relegated "to the slow and creaking procedure which, like a wounded snake, has dragged its slow length along, sans bargaining, sans labor peace, sans everything but pride of opinion, ill temper and frustration."

Congress, in 1959, subsequent to this Court's pronouncement of its "arguably" test of exclusive jurisdiction in the National Labor Relations Board, established a clear fracture between labor disputes over which the National Labor Relations Board has exclusive jurisdiction and over labor disputes which are subject to state regulation. Congress needed, and in Section 14(c)(1) and 14(c)(2) of the Labor Management Relations Act 1947 as amended 1959, 29 U.S.C.A. 164(c)(1) and (2) provided, a clear and simple test to eliminate the vast "no man's land". Congress amended the Labor Management Relations Act, 1947, 29 U.S.C.A. 164(c)(1) and (2) in 1959 to provide:

> Section 14(c)(1):
> The Board in its discretion, may by rule of decision or by published rules adopted pursuant to

the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers where, in the opinion of the Board, the effect of such labor dispute in commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: Provided, that the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

Section 14(c)(2):

Nothing in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.

The test established by Congress is clear. The state court, in determining its jurisdiction ascertains whether the National Labor Relations Board by "rule of decision" has declined "to assert jurisdiction over *any* labor dispute involving *any* class or *category* of employers" to which the complainant belongs. If so, "*nothing*" in the National Labor Relations Act "shall be deemed to prevent . . . the courts of any State . . . from assuming and asserting jurisdiction."

Here, the Alabama Supreme Court determined that the National Labor Relations Board had by decision declined to assert jurisdiction over radio stations that have annual gross receipts of less than $100,000.00. In

Raritan Valley Broadcasting Company, Inc., 1958, 122 N.L.R.B. 90, 91, 92, the Board held:

> The Board has decided that it will better effectuate the policies of the Act to assert jurisdiction in all future and pending cases involving enterprises engaged in the operation of radio or television broadcasting stations or telephone or telegraph systems which do a gross volume of business of at least $100,000 per annum.
>
> * * * * *
>
> It is the Board's opinion that in the light of its current budgetary limitations and the volume of cases which may be expected under its other standards, the $100,000 gross volume of business standard will extend the Board's jurisdiction over communications systems to the maximum possible extent at this time and will reasonably ensure that the Board will assert jurisdiction over all labor disputes involving such enterprises which tend to exert a pronounced impact on commerce.

The Board has by its decision in *Raritan, supra,* declined to assert jurisdiction over radio stations that have a gross business of less than $100,000.00 per year because $100,000.00 minimum will cover "all labor disputes involving such enterprises which tend to exert a pronounced impact on commerce."

Here, the pleadings and the uncontroverted evidence shows that WSIM's gross volume of business was substantially less than $100,000.00 per annum. Where the National Labor Relations Board has declined "to assert jurisdiction over *any* labor dispute involving *any* class

or category of employers . . . nothing in this Act shall be deemed to prevent or bar . . . the courts of any State . . . from assuming and asserting jurisdiction." 29 U.S.C.A. 164(c)(1) and (2). Where, as here, the National Labor Relations Board has declined to assert jurisdiction over labor disputes involving radio stations with a gross annual business of less than $100,000.00 nothing in the Labor Management Relations Act "shall be deemed to prevent or bar . . . the courts of any State . . . from assuming or asserting jurisdiction." 29 U.S.C.A. 164(c)(1) and (2). Under this unequivocal statute a state court would not be barred even if the National Labor Relations Board would assert jurisdiction over some phase of the labor dispute. *Cf. Smith v. Evening News Association*, 371 U.S. 195, 197-8, 9 L. Ed. 2d 246.

Local 1264's contention that the operations of separate legal entities must be considered by a state court in determining whether a particular employer falls within "any class or category of employers" as used in Section 14(c)(1), if accepted, would open Pandora's box and nullify 14(c)(1) and 14(c)(2). Congress itself defined "employer" in Section 2(2) of the Labor Management Relations Act, 29 U.S.C.A. 152(2):

> The term "employer" includes any person acting as an agent of an employer, directly or indirectly,
>
> . . .

This definition does not peripherally include separate legal entities. It is significant that Congress used the word "employers" in 14(c)(1) and (2) rather than the Board's word "enterprise".

Moreover, the record in this cause adequately established that WSIM is a single employer for jurisdictional purposes under the criteria established by the National Labor Relations Board, particularly as interpreted by the courts of appeal. *Miami Pressmen's Local No. 46 v. National Labor Relations Board,* 1963, D. C. Cir., 322 F.2d 405, 408-9; *J. R. Roy & Sons, Co. v. National Labor Relations Board,* 1958, 1 Cir., 251 F.2d 771, 773-4; *Employing Lithographers of Greater Miami v. National Labor Relations Board,* 1962, 5 Cir., 301 F.2d 20, 28-9; *Goodman's, Inc.,* 101 N.L.R.B. 352.

B.

The Decision Below is Not Final.

WSIM sought an injunction and damages in the state court. The Alabama Supreme Court did not undertake to pass upon the merits of the prayer for a permanent injunction or upon damages; its judgment specifically provided "we have made no attempt to decide the merits of this case". Local 1264 filed an answer that raised numerous issues, none of which have been passed upon by the highest court of the state (R 88-93). Unfettered authority is granted to the trial court to dissolve the temporary injunction upon consideration of the merits.

Assuming, arguendo, that the National Labor Relations Board has exclusive jurisdiction of the action for an injunction, the state courts still have jurisdiction to award damages under 29 U.S.C.A. 187. Another ap-

peal could follow from a decision against Local 1264 on the issue of damages. Piecemeal appeals to the United States Supreme Court are unreasonably burdensome for a small employer. Neither Local 1264, nor the national labor policy will be frustrated by a single appeal in this cause. On March 6, 1964, the trial court, after hearing additional argument, and receiving additional briefs on the merits issued a final decree, making the temporary injunction permanent and awarding $2,580.40 damages to WSIM. (Appendix A.) No appeal from this final order has been filed by petitioners herein.

We submit that *Local No. 438 Construction & General Laborers Union, AFL-CIO v. Curry*, 371 U.S. 542, 9 L.Ed. 2d 514 is not applicable to this cause. Congress by clear and concise language, has attempted to delineate federal and state jurisdiction. Section 14(c) of the Labor Management Relations Act, as amended, is designed to allow a state to apply its own law. *Cf. People of Puerto Rico v. Russell & Company*, 288 U.S. 476, 484, 77 L. Ed. 903, 909-10. The small employer, which Section 14(c) is designed to protect, must be free to pursue his state remedy to a final judgment on the merits without piecemeal appeals to this Court. One appeal to this Court places a financial hardship on the small employer; multiple appeal will increase the cost of litigation beyond his capacity.

C.

There is no Conflict of Decision.

Petitioners assert that the decision below is inconsistent with the decision of the courts of other states. None of the cases cited by petitioners considered the effect of Section 14(c) of the Labor Management Relations Act, as amended. The avowed purpose of this section was to allow the states to act immediately.

Petitioners' main complaint appears directed to a state court determining its own jurisdiction. It is axiomatic that "every court of general jurisdiction has power to determine whether the conditions essential to its exercise exists." *Texas & Pacific Railway Company v. Gulf, Colorado & Sante Fe Railway Company*, 270 U.S. 266, 274, 70 L. Ed. 578, 582.

Petitioners' argument that the Alabama Supreme Court ignored the decision of the National Labor Relations Board is irreconcilable with the fact that the Alabama Supreme Court based its decision on a clear and unequivocal decision of the Board; i.e., *Raritan Valley Broadcasting Co., Inc.*, 122 N.L.R.B. 90. In *Raritan* the Board declined to assert jurisdiction over a radio broadcasting company whose gross annual business was less than $100,000.00 on the sole ground that labor disputes involving employers in Raritan's class did not have a "pronounced impact on commerce." The view adopted by the Alabama Supreme Court is uncomplicated, concise, and exactly what Congress ordered; the state court merely ascertains whether the National Labor Relations Board has by decision declined to assert jurisdiction over any labor dispute involving any

class of employers to which the employer belongs; if the Board has so declined, the state court is free to act.

D.

There is no Important Question of Federal Law.

Petitioners argue that this suit is important to secure the national rights and uniformity of judgments. This argument is primarily based on matters foreign to the record in this cause.

Under our system of courts, juries and administrative agencies, it is not unusual for two fact finding agencies to reach opposite conclusions about the same controversy. In *N.L.R.B. v. Deena Artware, Inc.*, 1952, 6 Cir., 198 F.2d 645, cert. deni. 345 U.S. 906, 97 L. Ed. 1342, the court upheld the finding of the National Labor Relations Board that certain picketing was primary and protected; in a companion case, *United Brick & Clay Workers v. Deena Artware, Inc.*, 1952, 6 Cir., 198 F.2d 637, cert. deni. 344 U.S. 897, 97 L. Ed. 694, rehearing denied 344 U.S. 919, 97 L. Ed. 708 the same court upheld an award of money damages upon a finding that the identical picketing was secondary and actionable under 29 U.S.C.A. 185. In affirming the award of damages the court held at 198 F.2d 642-3:

> Under our existing system of courts, juries, administrative agencies, and appellate review, such findings, even though inconsistent, are not invalid, and one does not destroy the other. The two proceedings, even though arising out of the same labor dispute, were heard by separate fact finding agencies. The witnesses in the two proceedings were

not the same. The cross-examination of some witnesses who testified in both proceedings was not by the same attorneys. Necessarily, the evidence produced in the different proceedings by such testimony was not identical. Each fact finding agency was entitled to make its own decision upon the evidence before it. Though this Court on review recognizes the inconsistency, and may not be in accord with one of the two rulings if it was making the ruling as a matter of original jurisdiction, it does not have the right to set aside such ruling, if, in case of the jury verdict, it is supported by substantial evidence, or, in the case of the Labor Board proceeding, it is supported by substantial evidence on the record considered as a whole. In our opinion, the respective findings are so supported in each of the two proceedings.

The decisions of the National Labor Relations Board are anything but consistent. Compare *Orkin "The Rat Man" Incorporated*, 1955, 112 N.L.R.B. 762 with *Orkin Exterminating Company, Inc.*, 1956, 115 N.L.R.B. 622. In the first *Orkin* case the Board, after an exhaustive analysis of the relationship of the employer involved with twenty-eight other Orkin corporations, declined to combine the operations of all twenty-eight corporations for jurisdictional purposes; in the second *Orkin* case after another exhaustive analysis of the interrelationship of the same Orkin corporations the Board combined all Orkin corporations for jurisdictional purposes. A comparison of *Modern Linen & Laundry Service, Inc.*, 110 N.L.R.B. 1305; *Central Dairy Products Co.*, 114 N.L.R.B. 1189; *Goodman's Inc.*, 101 N.L.R.B. 352; *Clark Concrete Construction Corporation*, 116 N.L.R.B. 321 with

the cases cited on Page 10 of Petitioners' brief, namely, *Perfect T.V., Inc.*, 134 N.L.R.B. 575; *The Family Laundry, Inc.*, 121 N.L.R.B. 1619; *Washwell No. 2, Inc.*, 139 N.L.R.B. 417; *P-M Garages, Inc.*, 139 N.L.R.B. 987; *Corfu Mfg. Co.*, 3-RC-2523 (June 28, 1961), 48 L.R.R.M. 1584, shows that where the National Labor Relations Board purports to apply the same criteria its cases are irreconcilable on the facts reported in the Board's decisions. The decisions of the National Labor Relations Board, irreconcilable on the facts, show that the "arguably" test announced in *San Diego Building Trades Council v. Garmon*, April, 1959, 359 U.S. 236, 3 L. Ed. 2d 775 should not be applied in determining the jurisdiction of a state court under Section 14(c) of the Labor Management Relations Act, as amended.

No "serious problems" of conflict between state courts and the National Labor Relations Board will arise from state courts following the decision of the National Labor Relations Board asserting or declining jurisdiction over particular classes of employers. *Cf. Smith v. Evening News Association*, 371 U.S. 195, 197-8, 9 L. Ed. 2d 246, 249. Certainly no "serious problems" of conflict exist here.

VI.

CONCLUSION.

The granting of the petition for writ of certiorari will entail a piecemeal appeal and will cause extraordinary and unnecessary expense to all. If the Court determines that any issue raised in this cause is of sufficient importance for decision by this Court, we re-

spectfully suggest that the Court should review the cause after a final decision by the Alabama Supreme Court on the merits.

The petition for certiorari should be denied.

Respectfully submitted,

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Mobile, Alabama,

WILLIS C. DARBY, JR.,
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Mobile, Alabama,
Attorneys for Respondent.

CERTIFICATE OF SERVICE.

I, Willis C. Darby, Jr., hereby certify that I have mailed a copy of the foregoing Brief in Opposition to Petition for Writ of Certiorari, properly addressed to J. R. Goldthwaite, Jr., 1431 Candler Building, Atlanta, Georgia 30303 and to Pierre Pelham, First National Bank Building Annex, Mobile, Alabama, counsel for Petitioners, by depositing the same in a United States Post Office or mail box, with first class postage prepaid.

This the .... day of May, 1964.

WILLIS C. DARBY, JR.,
Attorney for Respondent.

APPENDIX A.

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA, IN EQUITY.

No. 58,568-H.

BROADCAST SERVICE OF MOBILE, INC.,
Complainant,

versus

LOCAL 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, and WILLIAM RAYBURN, DAVID FRIDGE and H. D. SMITH,
Respondents.

FINAL DECREE.

This cause being regularly set down for hearing and being submitted for decree on the pleadings and testimony as heard in open court and the court having duly considered the same, and upon consideration thereof, it is

ORDERED, ADJUDGED and DECREED by the court that the complainant recover actual damages in the sum of TWO THOUSAND FIVE HUNDRED EIGHTY AND 40/100ths ($2,580.40) DOLLARS from the respondents for which let execution issue.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the temporary injunction heretofore issued by this court be, and the same hereby is made permanent.

DATED March 6, 1964.

(S.) Joseph M. Hocklander,
JUDGE.

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 61

RADIO AND TELEVISION BROADCAST TECHNICIANS LOCAL UNION 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL., PETITIONERS

v.

BROADCAST SERVICE OF MOBILE, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

By order of the Court, dated June 1, 1964, the Solicitor General was invited to express the views of the United States with respect to this case. The facts are stated in the petition for certiorari and in the opinion of the Supreme Court of Alabama (Pet. 3-8, 16a-23a), and will be briefly summarized here.

Petitioner ("the Union") and radio station WAIP of Mobile, Alabama, had a collective bargaining agreement covering the station's two radio technicians, only one of whom was a full-time employee. Effective August 1, 1962, the ownership of WAIP was transferred to respondent, which renamed it WSIM. Respondent (hereafter "WSIM"), whose affiliated corporations own three other radio stations in Alabama and Mississippi (see p. 5, *infra*), did not retain all of WAIP's staff, and it replaced both of the technicians with non-union men. The Union then met with the new owners and discussed the rehiring of the full-time technician and the status of its agreement with WAIP. The meetings were unsuccessful from the Union's standpoint, and on August 10, 1962, it commenced peaceful picketing at WSIM's premises.[1] In addition, it began a campaign of personal calls and letters to WSIM's advertisers asking them to limit their dealings to stations with union contracts (Pet. 3-4, 17a).

WSIM thereupon filed a complaint in the Circuit Court of Mobile County asking that the Union's picketing and solicitation of advertisers be enjoined as an illegal boycott under Alabama law and a violation of the State's right-to-work law. In defense the Union challenged the jurisdiction of the State court and maintained that the labor dispute was within the exclusive jurisdiction of the National Labor Relations Board. The trial court issued a temporary

---

[1] The picket signs read, "WSIM NON UNION LOCAL 1264 IBEW AFL-CIO" (R. 79).

injunction, but subsequently dissolved the injunction after a full hearing on the ground that its jurisdiction was preempted (Pet. 5, 14a, 15a-16a). On appeal, the Supreme Court of Alabama reversed. It concluded that WSIM's annual volume of business did not meet the minimum jurisdictional requirement announced by the Board (Pet. 16a-23a).

We believe that the decision of the Supreme Court of Alabama was erroneous. In *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 244, this Court held that when "it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by § 7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8, due regard for the federal enactment requires that state jurisdiction must yield." On the evidence in this case, it is reasonably clear (1) that petitioner's activities were within the jurisdiction of the National Labor Relations Board, (2) that its picketing may be subject to the limitations of Section 8(b)(7) of the National Labor Relations Act, and (3) that its appeals to the station's advertisers may be protected by Section 7 of the Act. Accordingly, the petition for a writ of certiorari should be granted and the judgment of the Supreme Court of Alabama reversed on the authority of the *Garmon* case. See *McMahon* v. *Milam Mfg. Co.*, 368 U.S. 7; *Hattiesburg Building and Trades Council* v. *Broome*, No. 669, Oct. Term, 1963, reversed *per curiam*, April 27, 1964.

1. The Board's statutory jurisdiction extends under Section 10(a) of the Act to any unfair labor

practice "affecting commerce" as that term is defined in Section 2(7). However, Section 14(c)(1) of the Act, added in 1959, permits the Board to "decline to assert jurisdiction over any labor dispute * * * where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: *Provided*, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959." Section 14(c)(2), in turn, provides that, nothing "in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory * * * from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction."

Two principles observed by the Board are applicable to this case. First, under the Board's standards of discretionary jurisdiction, it will assert jurisdiction over an employer operating a radio or television station if his gross receipts are over $100,000 a year. *Raritan Valley Broadcasting Co., Inc.*, 122 NLRB 90. Second, in applying this standard, the Board considers several nominally separate corporations to be a single employer if all, or most, of the following four indicia of identity are present: (1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership. *Sakrete of Northern California, Inc.*, 137 NLRB 1220, 1222, affirmed, May 21, 1964,

C.A. 9, No. 18,745, 56 LRRM 2327; Twenty-first Annual Report, National Labor Relations Board (1957), 14-15; *Perfect T.V., Inc.*, 134 NLRB 575.[2]

Considering only such evidence as is not disputed by WSIM, it is clear that all four of the above elements are satisfied here:

Common ownership.—The majority stockholder of WSIM is Charles Holt of Hattiesburg, Mississippi, who is also the majority stockholder of three other radio stations,[3] and the sole owner of a corporation which renders accounting and other managerial services to all four stations. Holt's wife is a stockholder in all four stations, and one Bob Robinson is a minority stockholder in the Mobile, Montgomery, and Hattiesburg operations (Pet. 6).

Common management and centralized control of labor relations.—Credit policies, delinquent accounts,

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[2] The validity of this approach has been sustained in various courts of appeals. In addition to *Sakrete*, see *National Labor Relations Board* v. *Royal Oak Tool & Machine Co.*, 320 F. 2d 77, 80-81 (C.A. 6); *National Labor Relations Board* v. *Jones Sausage Co.*, 257 F. 2d 878, 879-880 (C.A. 4); *National Labor Relations Board* v. *A. K. Allen Co.*, 252 F. 2d 37, 38-40 (C.A. 2). The cases cited by WSIM (Brief in Opposition, 14) merely hold that, on the facts there presented, these criteria were not satisfied. There is no substance to WSIM's contention (Brief in Opposition, 18-19) that the Board's standards are not consistently followed. The cases cited were all decided during a short period when the Board required, in addition to the enumerated four elements, that there be some interchange of employees between the corporations and some uniformity in their labor conditions. Under the Board's present decisions, these factors are no longer required.

[3] These stations are located in Montgomery, Alabama, McComb, Mississippi, and Hattiesburg, Mississippi (Pet. 6).

and major financial matters for all the stations are managed by one Stan Lightsey, who is the treasurer of all five corporations. Holt and Robinson hire the station managers and the national advertising representative,[4] they alone have the authority to negotiate with unions, and they carry on continuing discussions with the station managers on sales policy. All three men visit each station regularly in addition to receiving daily business reports by letter and frequent telephone reports (Pet. 7-8).[5] See *Family Laundry, Inc.*, 121 NLRB 1619; *Alpha Corp.*, 128 NLRB 309.

Interrelation of operations.—The service corporation in Hattiesburg handles each station's payrolls, payment of bills, income tax returns and reports to the Federal Communications Commission. Moreover, all stations announce that they are members of the Holt Broadcasting Service, and employees and radio equipment are occasionally interchanged among the stations (Pet. 7-8). See *Checker Cab Co.*, 141 NLRB 583.

On these facts, the Board would conclude that despite their separate incorporation the four radio stations making up the Holt Broadcasting Service constitute a single employer for purposes of the Board's discretionary jurisdictional rules. Since the gross revenue of the four stations exceeds $100,000

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[4] Only the Mobile and Montgomery stations have a national advertising agent (Pet. 7).

[5] The station managers, however, have day-to-day control of the hiring, firing, and renumeration of their personnel, and of normal purchases (Brief in Opposition, 6-7).

per annum (Pet. 8), the Board would assume jurisdiction over labor disputes involving any of the stations, including WSIM.

2. At the time of the picketing the Union did not represent any of WSIM's employees, and it was alleged that the Union had sought recognition and a contract despite its lack of majority status (Brief in Opposition, 4). Consequently, it seems clear that the picketing here was "arguably subject to" Section 8 (b) (7) of the Act, which regulates recognition picketing. In addition, the appeals made to the station's advertisers appear to be protected concerted activity under the Act since Congress deliberately refrained from prohibiting such conduct in Section 8(b) (4) (B). See *National Labor Relations Board v. Servette*, No. 111, Oct. Term, 1963, decided April 20, 1964; cf. *Jemison Broadcasting Co.*, 135 NLRB 362.

3. Observing that under Alabama law, "every reasonable intendment not contradicted by the face of the pleadings will be made in favor of jurisdiction," the State court concluded that since the Union's plea to the jurisdiction did not specifically allege that WSIM's business exceeded $100,000 per annum, the presumption of jurisdiction was not overcome (Pet. 22a-23a). This procedural rule is inadequate, however, to bar the Union's claim of preemption in this Court. For, irrespective of the precise language of its pleading, the Union contended throughout that the Board had jurisdiction over the business involved and was permitted to introduce evidence to show that the ties among the four stations were such as to constitute them a single employer under the Board's

standards. In these circumstances, it would be wholly unrealistic to conclude that the preemption defense had not been adequately raised in the State courts.

4. The Supreme Court of Alabama did not reach the question whether the State court could assume jurisdiction "on the basis of facts claimed to have been in violation of this state's Right to Work Law" (Pet. 23a). This aspect of the case was fully disposed of by this Court's observation in *Retail Clerks, Local 1625* v. *Schermerhorn*, 375 U.S. 96, 105:

> * * * picketing in order to get an employer to execute an agreement to hire all-union labor in violation of a state union-security statute lies exclusively in the federal domain (*Local Union 429* v. *Farnsworth & Chambers Co.*, 353 U.S. 969, and *Local No. 438* v. *Curry*, 371 U.S. 542), because state power, recognized by § 14(b), begins *only with actual negotiation and execution of the type of agreement described by § 14(b)*. Absent such an agreement, conduct arguably an unfair labor practice would be a matter for the National Labor Relations Board under *Garmon*. [Emphasis in original.]

For the reasons stated we believe that the petition for a writ of certiorari should be granted and the judgment of the Supreme Court of Alabama should be reversed.[6]

Respectfully submitted,

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Solicitor General.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
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NORTON J. COME,
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National Labor Relations Board.

JULY 1964.

[6] Although the Supreme Court of Alabama expressly noted that it was not deciding the merits of the case (Pet. 23a), we submit that the jurisdictional determination alone qualifies for review by this Court under 28 U.S.C. 1257, as applied in *Construction & General Laborers' Union* v. *Curry*, 371 U.S. 542.

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Supreme Court of the United States

OCTOBER TERM, 1963.

No. [redacted] 61

RADIO AND TELEVISION BROADCAST TECHNICIANS LOCAL UNION 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL.,

Petitioners,

versus

BROADCAST SERVICE OF MOBILE, INC.,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Alabama.

MOTION FOR PERMISSION TO FILE REPLY BRIEF TO THE MEMORANDUM OF THE UNITED STATES AS AMICUS CURIAE.

BRIEF OF RESPONDENT IN REPLY TO THE MEMORANDUM OF THE UNITED STATES AS AMICUS CURIAE.

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963.

No. 1006.

RADIO AND TELEVISION BROADCAST TECHNICIANS LOCAL UNION 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL.,

Petitioners,

versus

BROADCAST SERVICE OF MOBILE, INC.,

Respondent.

MOTION FOR PERMISSION TO FILE REPLY BRIEF TO THE MEMORANDUM OF THE UNITED STATES AS AMICUS CURIAE.

Comes Broadcast Service of Mobile, Inc., Respondent herein, and moves the Court to file the attached *Brief of Respondent To The Memorandum Of The United States As Amicus Curiae* and as grounds therefor shows:

1. This cause is before the Court on a Petition for a Writ of Certiorari to the Supreme Court of Alabama.

2. The Solicitor General of the United States has filed a brief in this cause on the merits of the issues raised in the Petition for a Writ of Certiorari.

3. Respondent has not had an opportunity to be heard in this Court on arguments advanced by the Solicitor General.

Wherefore, Respondent requests permission to submit the accompanying brief.

Dated at Mobile, Alabama, this 11th day of September, 1964.

Respectfully submitted,

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WILLIS C. DARBY, JR.,
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Mobile, Alabama,
Attorneys for Respondent.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963.

No. 1006.

RADIO AND TELEVISION BROADCAST TECHNICIANS LOCAL UNION 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL.,

Petitioners,

versus

BROADCAST SERVICE OF MOBILE, INC.,

Respondent.

BRIEF OF RESPONDENT IN REPLY TO THE MEMORANDUM OF THE UNITED STATES AS AMICUS CURIAE.

The United States contends that, upon the undisputed facts of this cause, the National Labor Relations Board would conclude that the five separate corporations of the Holt Broadcasting Service would constitute a single employer for purposes of the Board's discretionary jurisdictional rules. The Alabama Supreme Court did not make any findings of fact or conclusions of law on this contention; doubtless because, under its views of the applicable law, this contention was immaterial.

The Solicitor General asks this Court to review the evidence pertaining to the corporate structure, ownership and modus operandi of each of the five corporations, and then determine in the first instance whether the Board would consider the five separate corporations as a single employer for jurisdictional purposes. It is not the function of this Court to make an independent examination of this entire record and to pass on the evidence without its prior consideration by the lower court. *National Labor Relations Board v. Donnelly Garment Co.*, 330 U.S. 219, 237, 91 L. Ed. 854, 867-8. Nor is it the function of this Court to apply Board decisions to the facts of this cause in the first instance. *National Labor Relations Board v. Pittsburgh Steamship Company*, 337 U.S. 656, 661, 93 L. Ed. 1602, 1607. If this Court should determine that the Supreme Court of Alabama erred in refusing to look to the operations of the several separate corporations, this Court should remand this cause to the Supreme Court of Alabama with directions to apply the appropriate law to the facts.

Assuming, arguendo, that the Supreme Court of Alabama erred in failing to consider whether the separate corporations should have been considered together for jurisdictional purposes, the applicable Board and Court decisions clearly establish that WSIM is a single employer for jurisdictional purposes.

The Board has on occasion treated separate concerns which are closely related as being a single employer for the purpose of determining whether the Board would assert jurisdiction.

According to the *Twenty-First Annual Report of the National Labor Relations Board*, at Pages 14-15:

> The question in such cases is whether the enterprises are sufficiently integrated to consider the business of both together in applying the jurisdictional standards.
>
> The principal factors which the Board weighs in deciding whether sufficient integration exists include the extent of:
>
> 1. Interrelation of operations;
> 2. Centralized control of labor relations;
> 3. Common management; and
> 4. Common ownership or financial control.

1. Interrelation of Operations.

Interrelation of operations consists of one enterprise performing a service for, or making sales to, an affiliated company. *Venus Die Engineering Company*, 110 NLRB 336. Here, each operating corporation operates a radio station in a city widely separated from any of the other radio stations (R 324-5); none of the operating corporations renders any service to or make any sales to any of the other corporations. The only evidence, if any, of integration of operations is that a separate service corporation performs some of each operating corporation's bookkeeping (R 328, 338). The Board and the courts have consistently held that centralized book-

keeping does not constitute "interrelation of operations". *Bachman Machine Company v. National Labor Relations Board*, 1959, 8 Cir., 266 F.2d 599, 601, 605; *Clark Concrete Construction Corporation*, 116 NLRB 321, 322; *Modern Linen & Laundry Service, Inc.*, 110 NLRB 1305, 1306; *Spartan Cafeteria Corporation*, 109 NLRB 166, 167.

2. Centralized Control of Labor Relations.

"Labor Relations" as used by the Board means wage rates, vacations, and other employee benefits. In *Central Dairy Products Co.*, 114 NLRB 1189, Central Dairy Products was "managed by the Southwest Management Company" which "was created for the sole purpose of administering" Central Dairy Products and two other companies engaged in a similar line of business. Corporate officers of Central Dairy Products, Southwest Management Company, and the two affiliated companies were identical. The Board concluded that each corporation was a separate enterprise for jurisdictional purposes. In so finding, the Board at 114 NLRB 1189, 1190, relied on the following:

> The record is devoid of evidence which would show centralized control of labor relations among these corporations with respect to the hiring and discharging of employees, setting wage rates, and establishment of vacations and other employment benefits. Similarly there is no indication of interchange of employees among the corporations. Under these circumstances, the facts that the 4 corporations have the same officers and that 3 of the corporations are managed by a fourth are not sufficient evidence to establish that the 4 corpora-

tions constitute a single employer within the meaning of the Act or that the Employer is a part of a single integrated enterprise.

Here, WSIM's station manager and the station manager of each of the other corporations have full charge of labor relations as defined by the Board; each station manager determines his employees' rates of pay, hours of work, vacations, holidays, and other working conditions; each station manager has and exercises the unfettered authority over hiring and discharging employees (R 144, 197, 296, 305, 327, 328, 339).

WSIM's manager's seeking help from another corporate officer when the union made legal contentions about the existence of a contract and the status of an alleged employee does not show "centralized control of labor relations".

Indeed, even if a single officer controlled the labor relations of all four operating stations in connection with negotiations with unions, such fact would be insufficient to justify considering the business of the other three stations in applying jurisdictional standards. *Bachman Machine Company v. National Labor Relations Board*, 1959, 8 Cir., 266 F.2d 599, 605.

3. Common Management.

The record conclusively shows that WSIM is managed by its station manager. The manager hires and discharges the employees, sets their hours of work, determines the program content, and is in full charge of the

day-to-day operations (R 110, 118, 130, 131, 144, 157, 197, 296, 297, 304, 305, 327, 328, 329).

Moreover, the Board has frequently refused to combine the receipts of two corporations for jurisdictional purposes even where both were under the same immediate management. In *Toledo Service Parking Company*, 96 NLRB 263, 264, the Board held that several corporations which operated parking garages under the supervision of one general manager were separate and distinct for jurisdictional purposes in spite of:

> . . . the record facts showing that the controlling stockholders of the Employer are also controlling stockholders of various other corporations, engaged in business operations similar to that of the Employer in many different States, and that there are certain individuals who are common to the directorate of all such corporations. There is one general manager employed by all the corporations engaged in the business of rendering parking services.

The Board concluded:

> We do not believe, however, that such facts establish an integration of these various corporations of such a character that we should regard them, for jurisdictional purposes, as one integrated operation.

4. Common Ownership and Financial Control.

Common ownership and financial control is the least significant of the factors which the Board considers in

determining whether two or more corporations are a single employer for jurisdictional purposes. The Board and Court decisions turn on the exercise of the power to control the "day-to-day operations" of the corporation rather than the naked power to control. *Goodman's, Inc.*, 101 NLRB 352, 353. In *Miami Newspaper Pressmen's Local No. 46 v. National Labor Relations Board*, 1963, D.C. Cir., 322 F.2d 405, 408, the Court held that:

> . . . both the Board and the courts have consistently and repeatedly held that common ownership alone does not suffice for this purpose. There must be something more in the form of common control, as it is usually phrased, denoting an actual, as distinct from merely a potential, integration of operations and management policies.

The First, Fifth and Eighth Circuits have held that the power to control the "day-to-day operations" of related corporations is irrelevant; that only the exercise of the power to control the "day-to-day operations" of separate corporations may be considered in determining whether separate corporations are to be considered as a "single employer" under the National Labor Relations Act: *J. G. Roy & Sons Co. v. National Labor Relations Board*, 1958, 1 Cir., 251 F.2d 771, 773-4; *Employing Lithographers of Greater Miami v. National Labor Relations Board*, 1962, 5 Cir., 301 F.2d 20, 28-9; *Bachman Machine Company v. National Labor Relations Board*, 1959, 8 Cir., 266 F.2d 599, 605.

Here, each corporation operates a radio station in a city far removed from the stations of each of the other corporations (R 323-6, 347). Each corporation has its

own manager who operates his corporation's radio station (R 110, 118, 130, 131, 144, 157, 296, 297, 304, 327). Each manager selects and discharges his own personnel (R 144, 197, 296, 305, 327, 328, 339). Each manager sets the wages of his personnel (R 144, 296, 328), and determines when his employees will have a vacation or a day off (R 296). Wages are not uniform among the several corporations (R 328). Each corporation maintains its own separate set of books in the city where it operates its radio station (R 115, 116, 327). Each corporation maintains a separate payroll (R 327), files separate federal income and social security tax returns (R 326, 327), and each files separate reports with the Federal Communications Commission (R 326). Each corporation's funds are kept separately (R 326). Each corporation has a bank account in the city where it operates its radio station, and each corporation also has a separate account in Hattiesburg, Mississippi (R 326). Each station manager makes his own purchases and approves his own bills for payment (R 327). Some of the stations have national advertising representatives and some have none (R 339). All advertising sold by WSIM was sold in and about Prichard, Alabama (R 346). There has been no national advertising over WSIM (R 346). One of the stations operated by the separate corporations is an affiliate of the American Broadcasting Company; one is an affiliate of the National Broadcasting Company; and two have no affiliation (R 346). Holt and Lightsey visit various stations periodically (R 328). They visit some stations more than others (R 328).

Each station manager has complete responsibility for the "day-to-day operation" of his station (R 304, 305, 327).

The undisputed testimony outlined above establishes that the station manager has full charge of, and responsibility for, the important "day-to-day operation" of his station.

The Board frequently refuses to consider the business of a parent corporation in determining whether the Board will exercise jurisdiction over a wholly owned subsidiary. *Consolidated Gas Company*, 107 NLRB 148, *Goodman's, Inc.*, 101 NLRB 352, *Spartan Cafeteria Corporation*, 109 NLRB 166, *Butte Water Company*, 117 NLRB 484. These parent-subsidiary cases best demonstrate the distinction between the power to control and the exercise of control over the "day-to-day operations" of separate corporations.

If this Court determines to decide the factual issues presented here, the Court should at least weigh the evidentiary facts relied upon by the Board in decided cases in order to properly apply the four criteria of the Board.

Sakrete of Northern California, Inc., 137 NLRB 1220, affirmed, *Sakrete of Northern California, Inc. v. National Labor Relations Board*, 1964, 9 Cir. 332 F.2d 902 and *Perfect T.V., Inc.*, 134 NLRB 575, cited by the United States are inapposite. In *Perfect T.V., Inc.*, the employer admitted that the various corporations have "a

very, very close interrelated working arrangement, and, in fact, are managed and operated by the same personnel"; in *Perfect T.V., Inc.*, the Board did not make any detailed findings that would help this Court ascertain what evidentiary facts the Board relied upon in reaching its conclusion. In *Sakrete of Northern California, Inc.*, the Court of Appeals and the Board specifically relied upon the fact that one Avril, who was President of both corporations, did substantially "more than set general policy"; Avril exercised authority on "local matters" such as the hiring and firing of employees, setting wage rates and conditions of employment. Here, the local manager has unfettered authority over all of the local matters controlled by Avril in *Sakrete* as well as other local matters (R 110, 118, 130, 131, 144, 157, 197, 296, 297, 304, 305, 327, 328, 329).

The United States contends that during a short period of time, the Board required, in addition to the four enumerated elements, that there be some interchange of employees between the corporations and some uniformity in their labor conditions; however, the United States does not cite any case to support this contention, and we have been unable to find any such case. In *Perfect T.V., Inc.*, 134 NLRB 575, cited by the United States, the Board specifically relied upon the fact that both corporations were "operated by the same personnel". In *Hartford Building Maintenance Co.*, 1964, 145 NLRB No. 140, 55 LRRM 1173, 1174, the Board, in determining that it would combine the business of two corporations, specifically relied upon the "interchange of employees". In *Thunderbird Hotel, Inc.*, 1963, 144

NLRB No. 19, 54 LRRM 1014, the Board relied upon two corporations sharing the same employees, in finding that two corporations were a single employer for jurisdictional purposes. Uniformity in labor conditions and interchange of employees are, and always have been, salient criteria employed by the Board in determining whether two corporations are a single employer.

Due to the Board's laudable policy of disposing of cases on an informal basis, few cases reach the decision stage in which the Board has not exercised jurisdiction. An evaluation of the evidentiary facts upon which the ultimate facts are based in Board decisions is necessary to a proper understanding of the Board's criteria.

The Board declined to assert its jurisdiction in the following cases, although the facts of each show more interrelation of operations, common management, common ownership, and financial control than exist here.

In *Consolidated Gas Company,* 107 NLRB 148, the Board said and held that:

> The employers are wholly owned subsidiaries of Consolidated Gas Company, located in Atlanta, Georgia, which is a holding company owning all of the stock in 5 corporations, including the 2 involved herein. All these corporations, separately incorporated and located in the State of Georgia, are engaged in the sale of bottled gas. During the past year, the parent holding company and its 5 subsidiaries received gas, equipment, and supplies valued in excess of $500,000 from sources outside the State of Georgia.

According to the employers' uncontradicted testimony, the parent holding company has a separate board of directors, with 1 holding company officer serving as officer of each of the 5 subsidiaries. The officers of the Savannah and Brunswick companies are the same. Although the general manager of the Savannah plant is also vice president of the Brunswick plant, the manager of the plant at Brunswick does not have reciprocal managerial duties at the Savannah plant.

Notwithstanding the interlocking directors among the parent company and the subsidiaries, all 5 corporations are conducted as separate enterprises, except that the holding company selects sources of supply for its subsidiaries and prepares, and allocates funds for, mutual advertising programs. Each subsidiary has a separate manager, offices, and books of account, and prepares separate tax returns of all kinds. Each handles its own selling activities. In addition, each corporation exercises full control over the employment conditions of its respective employees. There is no interchange of employees among the corporations. Wage rates and working conditions are set by the managers of the respective companies without regard for the personnel policies of the other subsidiaries. There is no showing that the parent holding company controls the labor relations policies of any of its subsidiaries.

Although the employers together with three other corporations are controlled by the same holding company, all the corporations operate independently and not as part of a single integrated enterprise with common operational and labor

relations policies. We find, therefore, that they are not a single employer within the meaning of the Act. Accordingly. we shall not consider the business of the three corporations not involved in this proceeding in determining whether to assert jurisdiction.

In *Goodman's Inc.*, 101 NLRB 352, the Board said and held in finding separate employers that:

> The employer is a wholly owned subsidiary of Baycull Trucking Company, Inc., a holding and real estate managing corporation owned by five families. This five-family group also owns a 90-percent interest in Goodman Warehouse Corporation. The Warehouse Corporation and Baycull each own a 50-percent interest in Goodman Furniture Company Goodman's, Inc., (the Employer), Goodman Furniture Company, and Goodman Warehouse Corporation occupy contiguous real estate owned by Baycull.
>
> Baycull's manager, Nathan L. Goodman, who is also vice president and a director of Baycull, is in addition the president and a director of each of the other three corporations. Two other director-officers of Baycull are the managers of the Employer and the Furniture Company, respectively. The fourth director-officer of Baycull is vice president and a director of the Warehouse Corporation. However, *none of these men participates in the day-to-day operations of more than one of the Goodman corporations.* (Emphasis supplied.)
>
> All four corporations are conducted as separate enterprises. Apart from the fact that the Employer

> rents all of its real estate from Baycull and that it utilizes the services of the Warehouse Corporation to an extent which constitutes less than 15 percent of the latter's revenue, the Employer does no business with or for any of the other corporations in the group. It has a separate manager, offices, and books of account, establishes separate credit ratings for its customers, and handles its own selling activities. There is no interchange of employees. Hours, wages, and conditions of work are different in each corporation. Labor relations policy is separately established by each of the several managers.

The Board has likewise refused to combine commerce data where the stock of several corporations was owned and controlled by the same individual or family. *Toledo Service Parking Company,* 96 NLRB 263, where there was not only common stock ownership but also "one general manager employed by all the corporations."

In *Clark Concrete Construction Corporation,* 116 NLRB 321, the Board held that three corporations engaged in manufacturing concrete products were not a single employer for jurisdictional purposes on the following facts:

> There are three Idaho corporations, each operating a plant located in that State, involved in this proceeding: (1) Clark Concrete Construction Corporation, operating a plant at Idaho Falls; (2) Idaho Concrete Products, Incorporated, operating a plant at Pocatello; and (3) Concrete Products,

Incorporated, operating a plant at Rupert. Merland Clark, his wife; Opal Clark, and Bill Holden, are, respectively, president and majority stockholder, secretary-treasurer, and a director of each corporation. The Idaho Falls plant, with approximately 47 employees, principally manufacturers cinder blocks and concrete products, including building blocks, sewer or culvert pipe, slabs, headgates, and prestressed beams. The Pocatello plant, with approximately eight employees, principally manufactures concrete pipe, headgates, and septic tanks. The Rupert plant, with approximately 12 employees, principally makes concrete headgates and farm irrigation pipe, some of which it also installs. The Idaho Falls plant sells blocks at wholesale to the other two plants, for resale to their customers. Each plant makes some retail sales. The Idaho Falls plant is about 50 miles from the Pocatello plant and about 120 miles from the Rupert plant, and the last two plants are about 72 miles apart.

President Clark maintains his office at the Idaho Falls plant, and such supervision as he exercises is confined to that plant, "practically all of the time". Generally, however, each plant is under the separate supervision of its own general manager, who hires and discharges employees, either directly or through his working foremen, and controls labor policy at his particular plant. There is little or no interchange of employees among the three plants. The general managers and Mr. Clark occasionally have business meetings together, generally in Idaho Falls, and occasionally one plant will rent equipment, such as manufacturing parts, to another, for which a charge is made.

Advertising is on a single-plant basis, except television advertising, which mentions, and is paid for by all three corporations. The office manager of the Idaho Falls plant audits the books of the other 2 corporations from once every month to once every 3 months. He may suggest better accounting methods or be consulted as to price changes, but has no supervision over office employees at the other plants. The Idaho Falls plant pays his salary and traveling expenses, the latter of which, however, are advanced to him by the other plants. Each plant has its own office and bookkeeper and keeps separate records and payrolls.

As noted above, the three corporations operating the plants have the same majority stockholder and common officers. However, in view of the different products manufactured at the 3 plants, their physical separation, the separate supervision and labor policies, the lack of employee interchange, and the separate record-keeping and payrolls, each of the 3 plants appears to be virtually autonomous. They are therefore not so integrated as to constitute the three corporations operating them a single employer for jurisdictional purposes.

In *Modern Linen & Laundry Service, Inc.*, 110 NLRB 1305, 1306, the Board refused to conglomerate purchases and sales for jurisdictional purposes of several corporations under common control on these facts:

Respondent, a Vermont corporation, is engaged in the laundry and dry cleaning business. It operates a plant in Rutland and three outlets at Rutland and Burlington, all in Vermont. The bulk of its business consists of wholesale linen and laundry

services to hospitals, hotels, restaurants, and similar institutions. In 1953 its total income amounted to $300,000, of which $30,000 was obtained from a linen supply route in northeastern New York State.

Louis Gordon is the sole stockholder of the Respondent corporation. Directors and officers are Louis Gordon, Murray Gordon, and Leo Silver. In addition, Louis Gordon, Murray Gordon, and their families own 4 linen supply companies in New York and 2 laundries in the same city. These individuals and their families also own three New York corporations, one of which makes uniforms for all the linen supply companies, including Respondent; another leases trucks to all linen supply companies, including the Respondent; and the third purchases supplies and equipment for all the companies, including Respondent.

Louis Gordon is the chief executive of all the companies including the Respondent. He and Murray Gordon act for all and sign all of the Respondent's checks. One individual acts as comptroller for all of the companies on a fee basis. However, there is no interchange of employees among the various companies, nor is there a uniform labor policy. Prices of services, delivery schedules of operation, wages, labor policy, as well as other aspects of the management of Respondent's business, are determined by the local plant manager at Rutland.

Here, each station manager operates his own corporation, he determines the number of employees, their

wages, hours and other conditions of employment (R. 144, 197, 296, 305, 327, 328, 339). No control is exercised over the manager in the day-to-day, week-to-week and month-to-month operations of WSIM (R. 304-5, 327).

The cases cited and quoted in this section conclusively show that WSIM is not sufficiently integrated with any of the other three separate and distinct operating corporations as to warrant the consideration of any two together in applying the Board's jurisdictional standards.

It is significant that only one employee is employed by WSIM in its engineering department. Under the National Labor Relations Act, the Board has no authority to certify a union as the collective bargaining representative of a one-man unit. *Luckenbach Steamship Co., Inc.*, 2 NLRB 181. Here, the assertion of jurisdiction by the Board is not only unwarranted on the commerce facts, but also would not effectuate the policies of the National Labor Relations Act, since the assertion of jurisdiction would not encourage "the practice and procedure of collective bargaining" between WSIM and the petitioner. 29 U.S.C. 151.

CONCLUSION.

The petition for a writ of certiorari should be denied. In the event that this Court should determine that the Supreme Court of Alabama applied federal law incorrectly, this cause should be remanded to the Su-

preme Court of Alabama to apply the Board's four criteria to the facts of this case, with directions to the Supreme Court of Alabama to ascertain whether the separate corporations should be considered as one employer for the purpose of the exercise of state jurisdiction pursuant to 29 U.S.C.A. 164(c).

Dated at Mobile, Alabama, this 11th day of September, 1964.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

I, Willis C. Darby, Jr., hereby certify that I have mailed a copy of the foregoing Brief of Respondent In Reply To The Memorandum Of The United States, properly addressed to J. R. Goldthwaite, Jr., 1431 Candler Building, Atlanta, Georgia 30303 and to Pierre Pelham, First National Bank Building Annex, Mobile, Alabama, counsel for Petitioners, by depositing the same in a United States Post Office or mail box, with first class postage prepaid.

This the 11th day of September, 1964.

WILLIS C. DARBY, JR.,
Attorney for Respondent.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. 61

RADIO AND TELEVISION BROADCAST TECHNICIANS LOCAL UNION 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET. AL.,

Petitioners,

VS.

BROADCAST SERVICE OF MOBILE, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR PETITIONERS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. 61

RADIO AND TELEVISION BROADCAST TECHNICIANS LOCAL UNION 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, WILLIAM RABURN, DAVID TRIDGE, AND H. D. SMITH,

Petitioners,

vs.

BROADCAST SERVICE OF MOBILE, INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF FOR PETITIONERS

OPINION BELOW

The opinion of the Supreme Court of Alabama (R. 402) is reported at ..... Ala. ....., 159 S. 2d. 452.

JURISDICTION

The opinion (R. 402) and judgment (R. 410) of the Supreme Court of Alabama were entered on December 12, 1963. Application for rehearing, filed on December 20, 1963 (R. 411) was denied on January 16, 1964 (R. 414). Petition for certiorari was filed on April 15, 1964 and was granted on October 12, 1964. The jurisdiction of this Court rests on 28 USC 1257(3), since rights, privileges and immunities were set up and claimed under the Constitution and Statutes of the United States and are asserted to have been improperly denied by the Supreme Court of Alabama.

QUESTIONS PRESENTED

I.

Whether the State of Alabama has jurisdiction through its courts to enjoin concerted activity of employees in the course of a dispute with an employer which affects interstate commerce where it is arguable that the National Labor Relations Board, under rules of decision previously issued by it, would assert its jurisdiction under the National Labor Relations Act, as amended.

II.

Did the Supreme Court of Alabama, in reversing the decision of the trial court that it was without jurisdiction because of Federal preemption, act in derogation of the holdings of this Court in *Construction and General Workers' Union* v. *Curry*, 371 U. S. 544; *International Brotherhood of Electrical Workers* v. *Farnsworth and Chambers Co.*, 353 U. S. 969; *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236; *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468; and other cases.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitution of the United States:

Article I, Section 8, Clauses 3 and 18 (Commerce Powers)

Article VI, Clause 2 (Federal Supremacy)

Labor Management Relations Act, 1947:

(June 23, 1947, Ch. 120, §1, *et seq.*; 61 Stat. 136, *et seq.*; 29 USC 141, *et seq.*

Labor Management Reporting and Disclosure Act, 1959:

(September 14, 1959, P. L. 86-257, Title VII, §701, *et seq.*; 73 Stat. 541, *et seq.*; 29 USC 153, 158, 159, 160, 164 and 187)

National Labor Relations Act, as amended by the Labor Management Relations Act, 1947, and by the Labor Management Reporting and Disclosure Act, 1959:

(June 23, 1947, Ch. 120, Title I, §101, *et seq.*; 61 Stat. 136, *et seq.*; 73 Stat. 541, *et seq.*; 29 USC 151, *et seq.*)

61 Stat. 140, 29 USC 157 [NLRA, Sec. 7]

61 Stat. 141, 73 Stat. 542, 29 USC 158(b) & (c), [NLRA, Sec. 8(b) & (c)]

61 Stat. 146, 73 Stat. 544, 29 USC 160(a), (c), (k) & (l) [NLRA, Sec. 10(a), (c), (k) & (l)]

73 Stat. 541, 29 USC 164(c) [NLRA, Sec. 14(c)]

Texts are set out in Appendix A, *infra*.

STATEMENT OF CASE

The petitioning union and Radio Station WAIP in Mobile, Alabama, were parties to a collective bargaining agreement covering the conditions of employment of petitioner David Fridge, a full-time radio technician, and another employee who was a part-time technician. (R. 158, 162, 163, 196, 210, 213) Station WAIP was sold to respondent and the radio technicians were terminated. (R. 154, 155) On August 1, 1962, Respondent began operating the station under the call letters WSIM. (R. 2) After conversations concerning the employment of Fridge and the adherence to standards established by collective bargaining with other radio

stations (R. 210, *et seq.*; 215, *et seq.*, 245, *et seq.*, 250, *et seq.*, 255, *et seq.*) the petitioning union on August 10, commenced peaceful picketing at the premises of Radio Station WSIM with signs which stated "WSIM Non-Union, Local 1264, IBEW, AFL-CIO" (R. 63, 260) and began soliciting advertisers to patronize stations having union contracts rather than to patronize respondent. (R. 260-1) The solicitations were made by letter (R. 11, 262) and personal contact. (R. 262-3)

On August 31, 1962, respondent filed a complaint in the Circuit Court of Mobile County, Alabama, asking that the picketing and solicitation of advertisers be enjoined until an election for the selection of a collective bargaining representative could be held in accordance with Federal law. (R. 1) The union filed a plea to the jurisdiction on September 10, 1962, asserting Federal preemption. (R. 5) On the same date, respondent filed an amended complaint, which substituted for the original, alleging that the picketing and solicitation of advertisers constituted a boycott, illegal under Alabama law, and was a violation of the State's right-to-work law. (R. 25)

On September 12, 1962, petitioners amended the plea to the jurisdiction. The plea, as amended, alleged that respondent is one of a group or chain of four radio stations, known as the Holt Broadcasting Service, the headquarters of which are located in Hattiesburg, Mississippi, and that the other stations comprising the Holt Broadcasting Service are located in Montgomery, Alabama, Hattiesburg, Mississippi, and McComb, Mississippi. The plea averred that the four radio stations are commonly owned and controlled, with Charles W. Holt owning a majority interest in all four stations and being the executive head of all four stations; that a common personnel and labor relations policy prevails

at all four stations; that respondent is part of the integrated financial operation known as the Holt Broadcasting Service; that the volume of business done by the four radio stations greatly exceeds $100,000 per year; that the activities of petitioners constitute protected concerted activity within the meaning of the National Labor Relations Act, as amended; and that the National Labor Relations Board would assert jurisdiction over the operations of respondent as a part of a business substantially affecting interstate commerce. (R. 65) The original plea alleged that the activity of the Union in soliciting secondary employers so substantially affected interstate commerce that the Labor Board would assert jurisdiction for this reason also. (R. 7-8) The plea concluded that the State Court was without jurisdiction because the jurisdiction of the National Labor Relations Board over the labor dispute was exclusive; and that for the State Court to grant injunctive relief would be unconstitutional and in derogation of the authority granted to the United States Congress by Article I, Section 8, Paragraph 3 of the Constitution of the United States to regulate interstate commerce and of Article VI, Clause 2, of the Constitution of the United States providing for the supremacy of the Federal Constitution and the laws enacted pursuant thereto. (R. 9-10)

Following a preliminary hearing the Trial Court issued an interlocutory decree on September 13, 1962, finding the conduct of the petitioners to be violative of Alabama law and enjoining further activity by petitioners. (R. 67)

The case came on for final hearing, following which the Trial Court found that its jurisdiction was preempted by the National Labor Relations Act. A motion to dissolve the injunction was granted and the case was dismissed on May 23, 1963. (R. 388)

Respondent requested reinstatement of the injunction pending appeal which request was granted on May 30, 1963, notwithstanding the earlier ruling of the Trial Court that it was without jurisdiction. (R. 389, 390)

Respondent appealed and on December 12, 1963, the Supreme Court of Alabama, relying upon its previous decision in *Alabama Highway Express, Inc.* v. *Teamsters' Local Union 612*, 268 Ala. 392, 108 S. 2d 350, held (R. 402-410) that the State Court had the prerogative of determining its own jurisdiction, and that the State Court need not base this determination upon a consideration of what the Labor Board would do under the facts of the case. (R. 408) The court held that, since petitioners did not plead nor rely upon the $100,000 jurisdictional standard established by the Board of single radio stations,[1] the State Court had jurisdiction. In so holding the court consciously and deliberately rejected (R. 408) the decisions of the Board in which the Board has held that in cases of commonly owned and controlled related businesses it will consider the impact upon commerce of the entire financial enterprise and will assert jurisdiction over a single corporate segment of the enterprise if the entire enterprise meets the discretionary jurisdictional standard established by the Board for the industry, even though the corporate segment alone does not attain that standard.[2] The Court also ignored the allegations of the plea to the jurisdiction (R. 5, 7) and the evidence in support thereof, which assert that the Board would also exercise juris-

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[1] *Raritan Valley Broadcasting Co., Inc.*, 122 NLRB 90.

[2] This jurisdictional criteria was specifically relied upon in petitioners' plea to the jurisdiction (R. 65); and twenty such Board decisions were cited to the Alabama Court, both in petitioners' original brief and in their motion for rehearing. (R. 411, 413)

diction because of the secondary effects of the dispute upon commerce.

By motion for rehearing petitioners again pointed out that the plea to the jurisdiction specifically relied upon the jurisdictional decisions of the Board applicable to commonly owned and controlled related financial enterprises, and requested reconsideration of the former judgment (R. 411, 412). The motion for rehearing was denied without opinion on January 16, 1964. (R. 414)

(a) *Evidence as to Integrated Enterprise*

The business of the respondent affects interstate commerce because it operates a radio station under license of the Federal Communications Commission issued pursuant to Federal law; and the Labor Board therefore has "statutory" jurisdiction. The annual volume of gross revenue (advertising sales, etc) of Station WSIM as of the time of the hearing would approximate $60,000 (R. 343) so that the Labor Board would not assume jurisdiction over the operation of the station if it had been a single independent radio station. WSIM, however, is one of four radio stations of which Charles Holt is the majority owner; and Holt is the sole owner of a service corporation which performs accounting, billing and other managerial services for the four radio stations. Holt's wife is a minority stockholder in all four radio stations and Bob Robinson is a minority stockholder in three of the radio stations (Respondent and those in Montgomery, Alabama, and Hattiesburg, Mississippi). Holt is president of three of the radio corporations (Respondent and those in Hattiesburg and McComb, Mississippi) and of the service corporation, and is secretary of the Montgomery, Alabama station. Mrs. Holt is secretary of three of

the radio stations and vice-president of the fourth and is secretary of the service corporation. Robinson is president and manager of the Montgomery, Alabama, radio station and vice-president of the Hattiesbrg, Mississippi, and Mobile, Alabama, radio stations and of the service company. Stan Lightsey is treasurer of all five corporations and vice-president and manager of the service corporation. (R. 323-326, 339, 349)

The service corporation shares office space with the Hattiesburg, Mississippi, station, WHSY, in a building owned by WHSY. (R. 329, 330, 338, 339). Holt and Lightsey have their offices in that building (R. 96). Daily financial reports are forwarded by each station manager to Holt addressed to Lightsey at Station WHSY (R. 97, 98, 304, 331, 332). A copy is sent to Robinson in Montgomery (R. 332). Lightsey handles all bookkeeping, billing of advertisers and payrolls for the four radio stations from the central financial office; and he prepares their annual reports required by the FCC to be separately submitted by each station (R. 323, 326, 342). He supervises the credit policies and participates in the collection of accounts of all four stations (R. 107, 329). Day to day purchases of supplies are reported to Lightsey and paid for by him (R. 328). Each station has a separate bank account, checks on which are written by Lightsey (R. 327) and signed by Holt alone, or by Robinson and Lightsey jointly (R. 108, 109). Lightsey participates in the major financial transactions of all four stations and he made the property appraisal of Station WAIP when it was purchased by the financial enterprise (R. 156, 157). Lightsey visits each station about twice each month, personally undertakes to collect accounts due the station from advertisers (R. 329, 107) and supervises the keeping of the station records (R. 107, 108).

Holt personally visits each station regularly and frequently, usually twice each month (R. 98, 296, 298, 299) and supervises the sales policies of each station, the sales efforts of each salesman and the work of each program announcer. He gives supervision, advice and suggestions as to the conduct of their daily work (R. 86, 99, 104, 187, 299).

Radio equipment is transferred back and forth between the four stations (R. 170, 171). Only two of the stations, Montgomery and Mobile, have a national advertising agent. This agent was employed by Holt and Robinson (R. 145, 340, 341). Holt and Robinson employ the managers and the engineering personnel of the stations (R. 339, 94-96, 113-114, 210-213). They have also employed other personnel for the various stations and employees are interchanged between stations from time to time (R. 84, 94, 95, 110-113, 117, 295). Robinson advised representatives of Local 1264 that the Holt stations were thinking of employing an engineer (radio technician) who would be resident chief engineer in Mobile, and consulting engineer for the other stations (R. 95, 96, 213).

While station managers have authority to hire and fire station personnel, such acts are discussed with Holt or Robinson in advance (R. 112-114, 117); and station managers do not even know the identities of the stockholders and officers of the stations they "manage." (R. 85, 86, 96, 105, 122, 301). Station managers do not have the authority to make decisions as to matters of recognition of labor unions, collective bargaining or other labor relations policies (R. 139, 140, 210, 211). Robinson or Holt make the decisions on these policy matters (R. 93, 100, 101, 215-218); and Holt, Robinson and Lightsey personally participated in the discussions with Local 1264 (R. 215-220). Appellee's Mobile

station manager repeatedly stated that he had no authority to discuss the hiring of radio technicians, the negotiation of a collective bargaining agreement or other matters of labor relations policy with the representatives of the Union (R. 93, 160, 220, 246, 247).

Holt requires the radio stations to announce that they are members of the Holt Broadcast Service (R. 86, 104) and employees of appellee and the other stations refer to the financial enterprise as the "Holt Group" or the "Holt Enterprises" (R. 95, 186, 188). The manager of the Mobile station is in almost daily contact with Robinson concerning the everyday operations of the station (R. 150, 303, 304) and management of the Hattiesburg, Montgomery and Mobile stations is highly integrated in Holt, Robinson and Lightsey. The Montgomery station has annual revenues in excess of $200,000 while Hattiesburg and McComb each have annual sales of approximately $100,000 (R. 242, 243).

(b) *Evidence as to the Secondary Effect Upon Commerce.*

Among the advertisers contacted by letter or in person by Local 1264 and asked to place their patronage with union stations rather than with Station WSIM were Hamm's TV and Appliance Company; Sam Joy Laundry and Cleaners, a chain of a dozen stores; Carvers Sundries, a drug store; Dixie Supply Co., a building materials supplier; the Pepsi-Cola Bottling Co.; Underwood Builders Supply Co., a chain of two stores; Joe Bullard Oldsmobile, Inc, an automobile agency; Delaney's Appliance Mart; Baxter's Clothiers, a two store chain; Jessee French Piano Co., a piano chain store; Adams Furniture and Appliance Co., a two store chain; Delchamps, Inc., an interstate grocery

chain; S & H Green Stamps Store, a national chain; and W. T. Grant Co., a national chain with two stores in Mobile (R. 9, 10, 350, 261, 262).

Mr. Hamm, the only one of these advertisers to testify, testified that he purchased appliances in interstate commerce valued at $127,000 annually (R. 316-319), thereby establishing the statutory interstate commerce jurisdiction of the Labor Board.[3]

Also in evidence is the decision of the NLRB (R. 18-25, 47) in Case #AO-29,[4] in which the Labor Board held in a substantially identical case[5] that, because the petitioners contacted advertisers whose businesses affected interstate commerce with a request that they cease advertising on the radio station, it would assert jurisdiction. Among the advertisers held by the Labor Board to affect interstate commerce substantially was Delchamps, Inc., one of the advertisers listed as having been contacted in this case. The Board found that Delchamps does a gross annual business in excess of $500,000 and purchases goods annually in interstate commerce valued in excess of $50,000. (R. 22)

(c) *Evidence of Unfair Labor Practices.*

There is evidence from which the Labor Board and its Regional Attorney may have been authorized to find that a purpose of the primary picketing was to cause the respondent to recognize the Union as collective bargaining representative of its technician employees and to conclude that the primary picketing violated Section 8 (b) (7) (c) of the Act [29 USC 158 (b) (7) (c)]. (R. 230, 275, 283, 284). If the Regional Attorney so

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[3] *NLRB v. Denver Building and Construction Trades Council*, 341 U. S. 675; *Guss v. Utah Labor Relations Board*, 351 U. S. 1.

[4] *Jemcon Broadcasting Co.*, 132 NLRB 362 (1962).

[5] The petition for advisory opinion (R. 12-18, 47) illustrates the similarity between the two cases.

concluded, the Act directs him to seek an injunction against the picketing so as to afford summary relief therefrom.[6]

The evidence also authorizes the conclusion that such a purpose did not exist and that the sole reason for the picketing was to advertise that the station was non-union, and thereby seek to protect working conditions established by collective bargaining at other stations in Mobile. (R. 260, 231, 275, 276, 283, 284)[7]

There is no evidence that the solicitation of advertisers was accompanied by any threat, restraint or coercion.[8]

(d) *Further Proceedings in the State Courts.*

Following the denial of the motion for rehearing, petitioners filed a request with the Trial Court that the assessment of damages be stayed pending disposition of the jurisdictional question by this Court. The motion for stay was denied and damages of $2,580 were assessed against petitioners. Petitioners' appeal from that judgment is now pending in the Supreme Court of Alabama[9] but will not be scheduled for argument before April 5, 1965.

ARGUMENT

1. *The Union Conduct Constituted Either Protected Concerted Activity or Unfair Labor Practices Under Section 8 of the Act.*

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[6] Section 10(l), 29 USC 160(l).

[7] See proviso to Section 8(b)(7)(c), 29 USC 158(b)(7)(c).

[8] See Section 8(b)(4)(ii), 29 USC 158(b)(4)(ii).

[9] *Radio and Broadcast Technicians Local Union 1264, et al v. Broadcast Service of Mobile, Inc.*, 1 Division 250.

Following the purchase of Station WAIP by respondent and the termination of the employment of David Fridge as the station's full-time radio technician, representatives of the Union met with the Company and urged the employment of Fridge by respondent and discussed with respondent the execution of a labor agreement which embodied working conditions common to contracts with other stations in the Mobile area. After two meetings of Union representatives with the manager and two meetings at which the Company's attorney was present, the Union began picketing at the studio of the radio station with signs stating "WSIM Non-Union, Local 1264, IBEW, AFL-CIO," and not claiming recognition by their language. The picketing was at all times orderly and peaceful. (R. 164, 260) Simultaneously the Union distributed a letter to advertisers of the station which made no claim for recognition but which solicited the advertisers to "help us preserve the decent wages and working conditions which we have established over a number of years by placing your advertising with union stations." (R. 11, 350)

The respondent contended below that the request of the Union that it employ Fridge, since WSIM was only employing one technician rather than two as had WAIP, was tantamount to a demand that this non-union employee be terminated and replaced with Fridge. The respondent also contended that the discussions concerning a contract constituted a request for recognition without employed members, and that the picketing was in furtherance of these two objectives. The Union on the other hand contended that its picketing had as its objective only publicizing the fact that WSIM did not employ union members or have a contract with the union.

If the respondent's contentions be correct the conduct of the Union was proscribed by Section 8 (b) (2) of the Act [29 USC 158 (b) (2)] insofar as it sought the employment of Fridge and by Section 8 (b) (7) (c) of the Act [29 USC 158 (b) (7) (c)] insofar as it sought recognition. *Construction and General Laborers Union* v. *Curry*, 371 U. S. 544; *Int. Bro. of Electrical Workers* v. *Farnsworth & Chambers Co.*, 353 U. S. 969.

If the contentions of the Union be correct (there being no evidence that the picketing induced any individual employed by any other employer not to perform the duties of his employment with respect to services to be rendered to WSIM), the conduct of the Union was protected by the proviso to Section 8 (b) (7) (c). *Smitley d/b/a Crown Cafeteria* v. *NLRB*, 327 F 2d 351 (CA-9, 1964); *NLRB* v. *IBEW Local 3*, 317 F 2d 193 (CA-2, 1963); *Plumbers Local 741*, 137 NLRB 1125 (1962); *Houston Building and Construction Trades Council*, 136 NLRB 321 (1962).

There is no contention or evidence that the solicitation of advertisers was attended by threats, restraint or coercion of advertisers in order to cause them to withhold their patronage from the radio station. Had there been any threats, coercion or restraint the Union's activity would have been proscribed by Section 8 (b) (4) (ii) of the Act [29 USC 158 (b) (4) (ii)]. Since there was none such, the solicitation of advertisers was concerted activity protected by the proviso to Section 8 (b) (4). *NLRB* v. *Servette, Inc.*, 377 U.S. 46; *NLRB v. Fruit and Vegetable Packers Local 760*, 377 U.S. 58. ". . . (A) union is free to approach an employer to persuade him to engage in a boycott, so long as it refrains from the specifically prohibited means of coercion through inducement of employees." *Carpenters Local 197* v. *NLRB*, 357 U. S. 93, 99.

"When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by Section 7 of the Taft-Hartley Act, or constitute an unfair labor practice under Section 8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the states free to regulate conduct so plainly within the aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law. Nor has it mattered whether the states have acted through laws of broader general application rather than laws specifically directed toward the governance of industrial relations. Regardless of the mode adopted, to allow the states to control conduct which is the subject of national regulation would create potential frustration of national purpose." *San Diego Building Trades Council* v. *Garmon*, 359 U. S. 236, 244.[10]

2. *Published Rules of Decision of the Board Demonstrate Clearly that It Would Assert Jurisdiction over the Labor Dispute.*

(a) *Jurisdiction Based Upon the Integrated Enterprise.*

After the decisions of this Court in *NLRB* v. *Denver Building and Construction Trades Council*, 341 U.S. 675, and in *Guss* v. *Utah Labor Relations Board*, 358 U. S. 1,[11] a so-called "no-man's land" of labor disputes existed in which the states could not act but in which the Labor Board in its discretion declined to act.

To eliminate this hiatus, Congress in the Labor Management Reporting and Disclosure Act of 1959 amended the National Labor Relations Act by provid-

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[10] See also *Weber v. Anheuser Busch, Inc.*, 348 U. S. 468; *Garner v. Teamsters' Union*, 346 U. S. 485.

[11] See also *NLRB v. Jones and Laughlin Steel Corp.*, 301 U. S. 1; *NLRB v. Feinblatt*, 306 U. S. 601.

ing that the Board in its discretion may, by rule of decision or by published rules, decline to assert jurisdiction over any labor dispute involving any class or category or employers where in the opinion of the Board the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction. [Section 14 (c) (1); 29 USC 164 (c) (1)]. The amendment also provided that the states shall not be barred from asserting jurisdiction over labor disputes over which the Board declines to assert jurisdiction. [Section 14(c)(2); 29 USC 164 (c)(2)].

The Congressional amendment thus recognizes the pervasive character of Federal jurisdiction by requiring that the Board must first decline to assert jurisdiction before the states may act.

Radio stations are instrumentalities of interstate communications, authorized and operated under Federal regulatory licenses issued in furtherance of the interstate commerce power of Congress. The respondent and all other radio stations are therefore within the statutory ambit of Federal preemption unless the Board has by rule of decision declined to exercise its jurisdiction with respect to a class or category of stations which includes the respondent.[12]

In *Raritan Valley Broadcasting Co., Inc.*, 122 NLRB 90, the Board held that it would not assert jurisdiction over labor relations and labor disputes at single radio stations having an annual sales volume of less than $100,000.[13] Where statutory jurisdiction exists, however, the Board has repeatedly held that its discretion-

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[12] The Board has not undertaken to publish rules, adopted pursuant to the Administrative Procedure Act, for the guidance of parties and state agencies as to the discretionary exercise of its jurisdiction. They must therefore look to its published decisions.

[13] See *23rd Annual Report of the NLRB*, 1958, pp. 7-9.

ary exercise of jurisdiction will be based upon the totality of the impact upon interstate commerce of an entire integrated financial enterprise rather than upon the impact of a single segment of the enterprise standing alone. The Board has summarized its practice in such cases as follows:

> "a. Integrated Enterprises.—In applying the present jurisdictional standards, the Board early reaffirmed the long-established practice of treating separate concerns which are closely related as being a single employer for the purpose of determining whether to assert jurisdiction. The question in such cases is whether the enterprises are sufficiently integrated to consider the business of both together in applying the jurisdictional standards.
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> "The principal factors which the Board weighs in deciding whether sufficient integration exists include the extent of:
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> "1. Interrelation of operations;
>
> "2. Centralized control of labor relations;
>
> "3. Common management; and
>
> "4. Common ownership or financial control.
>
> "No one of these factors has been held to be controlling, but the Board opinions have stressed the first three factors, which go to show 'operational integration,' particularly centralized control of labor relations. The Board has declined in several cases to find integration merely upon the basis of common ownership or financial control."

21st Annual Report of the NLRB, 1956, pp. 14, 15.

All of the factors which have been relied upon by the Board to show integration are present to a marked degree in this case—more so than in many of the cases in which the Board has found such integration to exist

and over which it has therefore asserted jurisdiction. Compare, *The Family Laundry, Inc.*, 121 NLRB 1619 (1958); *Alpha Corporation*, 128 NLRB 309 (1960); *Perfect TV, Inc.*, 134 NLRB 575 (1961); *Washwell #2, Inc.*, 139 NLRB 417, 419 (1962); *P-M Garages, Inc.*, 139 NLRB 987, 992 (1962); *Checker Cab Co.*, 141 NLRB 583 (1963); *Corfu Mfg. Corp.*, 48 LRRM 1584 (Case No. 3-RC-2523, decided June 28, 1961). This exercise of the Board's jurisdictional discretion has received the approval of the Courts in a number of cases. For example, in *Sakrete, Inc. v. NLRB*, 332 F 2d 902, 907:

> "Apart from the argument, which we reject, that the Board's criterion contemplates interrelationship, centralized control and common management at the local level if two companies are to be regarded as a 'single employer,' no other reason is suggested or occurs to us why mutuality of control at the local level must be shown. Seldom would it be practicable for two companies situated in different parts of the country to be managed at the local level by one man or management group. If there is overall control of critical matters at the policy level, the fact that there are variances in local management decisions will not defeat application of the 'single employer' principle.[14]

We conclude, not only that the Board had statutory jurisdiction over labor relations of respondent, but also that under its discretionary jurisdictional rules the Board would affirmatively exercise that authority upon the basis that respondent is an integral part of a

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[14] See also *NLRB v. Royal Oak Tool and Machine Co.*, 320 F 2d 77, 80-81 (CA-6); *NLRB v. Jones Sausage Co.*, 257 F 2d 878, 879-880 (CA-4); *NLRB v. A. K. Allen Co.*, 252 F 2d 37, 38-40 (CA-2).

financial enterprise which substantially affects commerce.[15]

(b) *Jurisdiction Based Upon Secondary Effect Upon Commerce.*

In *Teamsters Local 554 (McAllister Transfer, Inc.)*, 110 NLRB 1769 (1954), the Board held that in applying its discretionary standards of jurisdiction to cases involving secondary effects of union activity, it will take into consideration not only the operations of the primary employer but also the operations of any secondary employers which are affected by the union conduct. In such cases the Board will assert jurisdiction over the entire labor dispute, including all employers affected thereby, both primary and secondary, even though, independently considered, some of them may not have a sufficient volume of business to meet the jurisdictional standard. *Riley Cartage Co.*, 110 NLRB 1742 (1954); see also *21st Annual Report of the NLRB, 1956*, pp. 12, 13.

In the present case the secondary activity of the Union in soliciting advertisers falls squarely within the ambit of conduct regulated by Section 8(b)(4) of the statute. In a similar case, involving the same Union and another Mobile radio station, the Union requested the Board for an advisory opinion under the rules and

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[15] A detailed analysis of the cases relied upon in earlier briefs by respondent will not be undertaken at this time. In his memorandum on behalf of the United States, as *amicus curiae*, the Solicitor General points out (Footnote 2, p. 5) that those cases were all decided during a short period when the Board required, in addition to the enumerated four elements, that there be some interchange of employees between the corporations and some uniformity in their labor conditions; and that under the Board's present decisions these factors are no longer required. In addition, all of the cases relied upon by petitioners are comparatively recent ones and reflect the present practice of the Board; whereas those relied upon by respondent are of an earlier period when a differently composed Board followed a more conservative approach, or do not meet the four criteria outlined by the Board in its *Twenty-First Annual Report, supra.*

procedures adopted by the Board to implement the broader duty of decision devolving upon the Board from the 1959 enactment of Section 14(c) of the Act.[16] The advisory opinion of the Board in that case (R. 18, 20)[17] reveals that the activity of the Union there was identical to that in the present case and that some of the same advertisers were contacted in that case as are shown to have been contacted in the present case. (R. 9, 10). The Board held that it would assume jurisdiction of that dispute because Delchamps, Inc., one of the advertisers contacted in the present case, meets the Board's jurisdictional standards. The record also shows that the only advertiser who testified as a witness on behalf of respondent, Paul Hamm (R. 318), purchases goods in interstate commerce valued in excess of $100,000 per year.

This jurisdictional standard was relied upon in the record before the Supreme Court of Alabama and upon this basis also the State Court should have upheld Federal preemption. *Hattiesburg Building & Trades Council* v. *Broome.*, U. S. 12 L ed 2nd 172 (No. 669, Oct. Term, 1963, decided Apr. 27, 1964); *Madison Building and Construction Trades Council*, 134 NLRB 517; *Truck Drivers Local 649*, 93 NLRB 386; *McAllister Transfer Co., supra.*

We believe that under this record it is not even "arguable" that the Board would have declined to assert jurisdiction over the dispute.

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[16] *Rules and Regulations of the NLRB*, Series 8, as amended, Subpart H, Sections 102.98, *et seq.*, pp. 43, *et seq.* (24 FR 9095, as amended by 26 FR 3885, 26 FR 7546, 27 FR 2091, and 27 FR 5094). See also *25th Annual Report of the NLRB, 1960*, pp. 18-19.

[17] *Jemcon Broadcasting Co.*, 135 NLRB 362 (1962).

3. *In Determining Its Jurisdiction The State Court Must Base Its Consideration Upon The Rulings of the Board Under the Facts Of the Case.*

In its second *Garmon* decision[18] this Court was dealing with the substantive jurisdiction of the Labor Board in stating that: "When an activity is arguably subject to Section 7 or 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interferance with national policy is to be averted." 359 U.S., at 245. The "arguable" concept applies with even greater force to the application of the discretionary jurisdictional standards of the Board. This is clearly demonstrated by a brief historical consideration of the decisions of this Court and the actions of Congress upon the subject. (See subdivision II of Argument, *supra.*) At the time of the *Garmon* decision, the states could not regulate a dispute which affected interstate commerce in excess of the rule *de minimis*. *Guss v. Utah Labor Relations Board, supra.* Thereafter, the language chosen by Congress to permit greater latitude of state action in labor disputes which affect commerce indicates clearly that Congress approved the "arguable" concept and adopted it for application by state courts in making jurisdictional determinations. In adding Section 14(c) to the Act in 1959, Congress provided that the Board in its discretion may by rule of decision decline to assert jurisdiction over any labor dispute or class or category of employers where "the affect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction;" and provided thereafter that nothing in the Act shall be deemed to prevent a state court from

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[18] *San Diego Building Trades Council v. Garmon*, 339 U. S. 236.

asserting jurisdiction "over labor disputes over which the Labor Board declines, pursuant to paragraph (1) of this sub-section, to assert jurisdiction." 29 USC 164(c)(1) &. (2). Congress thus made it apparent that a state court in determining its jurisdiction must consider and apply the decisions of the Board to the facts of the case and must affirmatively find that the Board would "decline" to assert jurisdiction before it may act.

If it be "arguable" that the Board would assert jurisdiction over a labor dispute, the language of the statute makes it clear that Congress intended to protect the regulatory scheme which it had devised at least to the point of requiring the complainant in the state court to obtain a ruling from the Board that the affect of the dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction.

The Supreme Court of Alabama expressly refuted petitioner's contention in this regard, stating: "Appellee argues that affiliated enterprises of the majority and controlling stockholders of appellant should be considered by the Board in determining whether the jurisdictional standards are met and insists that the court must base its jurisdiction on a consideration of what the Board would do under the facts in this case, and that in any event the case must first be submitted to that body. We cannot agree. We have recently stated that: '. ... the authority is clear to the effect that every court of general jurisdiction has judicial power to determine the question of its own jurisdiction' See *Alabama Highway Express, Inc.* v. *Local 612, etc.*, 268 Ala. 392, 397, 108 So. 2d 350, and cases there cited." (R. 408-409)

Petitioners do not quarrel with the proposition that

a state court must have power to determine its own jurisdiction; but in so doing it must be governed by the rule of law prescribed by Congress for such determinations.[19] To permit state courts, at will, to completely disregard jurisdictional decisions of the Board in making such determinations would negate entirely the specific requirement of Section 14(c) that the state courts may not act in a case unless the Board has "declined" to do so in a guiding rule previously announced by the Board.

In holding that state courts must defer to the exclusive competence of the Labor Board in *Plumbers Local 100 v. Borden*, 373 U.S. 690, this Court reaffirmed its *Garmon* decision, saying:

> "This relinquishment of state jurisdiction, the Court stated, is essential 'if the danger of state interference with national policy is to be averted,' 359 U.S, at 245, and is as necessary in a suit for damages as in a suit seeking equitable relief. Thus the first inquiry, in any case in which a claim of federal preemption is raised, must be whether the conduct called into question may reasonably be asserted to be subject to Labor Board cognizance." 373 U.S., at 693, 694.

This Court has never deviated from the wisdom of that approach, recognizing that working men (and the lawyers who undertake to advise them, we might add) are entitled to know in advance with some reasonable degree of certainty the standards by which their conduct will be judged. Absent this certainty the rights protected to them by the National Labor Relations Act are totally meaningless, for only with that certainty can they undertake to exercise those rights.

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[19] *Cf., Marine Engineers Beneficial Assn. v. Interstate Steamship Co.*, 370 U. S. 173.

CONCLUSION

For each of the reasons herein urged, the judgment below should be reversed and the judgment of the Trial Court, dismissing the case, affirmed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

NO. 61

RADIO AND TELEVISION BROADCAST TECHNICIANS LOCAL UNION 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET. AL.,

Petitioners,

vs.

BROADCAST SERVICE OF MOBILE, INC.,

Respondent.

APPENDIX A TO BRIEF FOR THE PETITIONERS

PART A

CONSTITUTIONAL PROVISIONS INVOLVED

CONSTITUTION OF THE UNITED STATES

Art. I, Sec. 8, Clauses (3) and (18):
Art. VI, Clause (2):

"Art. I, Sec. 8 (Powers of Congress). The Congress shall have Power—

"(3). To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

* * * *

"(18). To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

"Art. VI. Clause 2. Supreme Law.—

"(2). This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

NATIONAL LABOR RELATIONS ACT, ETC.

PART B

STATUTES INVOLVED

LABOR MANAGEMENT RELATIONS ACT, 1947,
and
NATIONAL LABOR RELATIONS ACT,
AS AMENDED
61 Stat. 140 ff, 73 Stat. 541 ff, 29 U.S.C.
Section 157, Section 158 (b) and (c), Section 160 (a), (c), (k) and (l), Section 164:

"Sec. 157. * * *

"Employees shall have the right to self-organize, to form, join, or assist labor organizations, to bargain collectively through representatives of

their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any, or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)."

"Sec. 158. * * *

"(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a);

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce

to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e);

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9;

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in

another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work;

Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of an employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act: Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

(5) * * *

(6) * * *

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act,

(B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted, or

(C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: Provided, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9(c)(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: Provided further, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8(b).

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor prac-

tice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

"Sec. 160 * * *

"(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

"(b) * * *.

"(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back way, as will effectuate the policies of this

Act: Provided, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: And provided further, That in determining whether a complaint shall issue alleging a violation of section 8(a) (1) or section 8(a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

"(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8(b), the Board is empowered and directed to hear and

determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

"(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8(b), or section 8(e) or section 8(b) (7), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: Provided further, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such pe-

riod: Provided further, That such officer or regional attorney shall not apply for any restraining order under section 8(b) (7) if a charge against the employer under section 8(a) (2) has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: Provided further, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b) (4) (D)."

"Sec. 164. * * *

"(c) (1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: Provided, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

(2) Nothing in this Act shall be deemed to pre-

vent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction."

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v.

BROADCAST SERVICE OF MOBILE, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE [1]

STATEMENT

The question presented is whether a State court has power to enjoin peaceful picketing and related activity directed against a company, where, although the business of the company itself is not sufficient to satisfy the yardsticks of the National Labor Relations Board for the assertion of its jurisdiction, it is reasonably

[1] Pursuant to the Court's request, the government filed a memorandum prior to the grant of certiorari, expressing the view that the petition should be granted and that the judgment below should be reversed. In this brief, we amplify the views set forth in our earlier memorandum.

clear that the Board would combine the company's business with that of other related companies and assert jurisdiction over the combined group.

The underlying facts may be summarized as follows:

Petitioners ("the Union") and radio station WAIP of Mobile, Alabama, had a collective bargaining agreement covering the station's two radio technicians, only one of whom was a full-time employee (R. 162–163, 171). Effective August 1, 1962, the ownership of WAIP was transferred to respondent, which renamed it WSIM (R. 91, 154). Respondent (hereafter "WSIM") did not retain all of WAIP's staff, and replaced both of the technicians with non-union men (R. 92–95, 111–114). The Union then met with the new owners and discussed the rehiring of the full-time technician and the status of its agreement with WAIP (R. 91–93, 210–221, 245–260). The meetings were unsuccessful from the Union's standpoint, and on August 10, 1962, it commenced peaceful picketing at WSIM's premises.[2] In addition, it began a campaign of personal calls and letters to WSIM's advertisers asking them to limit their dealings to stations with union contracts (R. 203, 237, 260–263, 312–315).

WSIM thereupon filed a complaint in the Circuit Court of Mobile County asking that the Union's picketing and solicitation of advertisers be enjoined as an illegal boycott under Alabama law and a violation of

[2] The picket signs read, "WSIM NON UNION LOCAL 1264 IBEW AFL-CIO" (R. 260).

the State's right-to-work law (R. 1–5, 25–30, 77). In defense the Union challenged the jurisdiction of the State court and maintained that the labor dispute was within the exclusive jurisdiction of the National Labor Relations Board. The Union asserted that WSIM was one of a group of four radio stations known as Holt Broadcasting Service, that all four stations were commonly owned and managed, that the Board would consider their combined volume of business in determining whether to assert jurisdiction, and that the total revenue of the four stations was in excess of $100,000 per year, the amount required by the applicable Board jurisdictional standard (R. 65–67, 70–76, 78–80). The trial court issued a temporary injunction, but, after full hearing, dissolved it on the ground that its jurisdiction was preempted (R. 67–70, 388).

The Supreme Court of Alabama reversed. It held that under the law of Alabama "every reasonable intendment, not contradicted by the face of the pleadings, will be made in favor of [the court's] jurisdiction," and that, since the Union did not allege that the gross business of WSIM itself equaled or exceeded $100,000 per year, insufficient facts had been alleged to negate the existence of State court jurisdiction (R. 402–410).

The evidence in the record shows that the majority stockholder of WSIM is Charles Holt of Hattiesburg, Mississippi, who is also the majority stockholder of three other radio stations located in Montgomery, Alabama, McComb, Mississippi, and Hattiesburg,

Mississippi. Holt is also the sole owner of a corporation which renders accounting and other managerial services to all four stations. Holt's wife is a stockholder in all four stations, and Bob Robinson is a minority stockholder in the Mobile, Montgomery, and Hattiesburg stations. Holt is the president of three of the radio stations, including WSIM, secretary of the fourth, and president of the service corporation. Robinson and Mrs. Holt are also officers of all five corporations. Stanley Lightsey is treasurer of the four radio stations and the service corporation, and manager of the service corporation (R. 324–326, 339, 346).

The service corporation shares office space with radio station WHSY in Hattiesburg, Mississippi, one of the chain, in a building owned by WHSY. Holt and Lightsey also have offices in that building (R. 96, 338–339). Daily reports of the amount of business done by each station and of the amount of money deposited in the bank are forwarded by each station manager to Lightsey at Hattiesburg, and a copy is sent to Robinson in Montgomery (R. 97–98, 150, 332). Lightsey handles the overall bookkeeping for all the stations; he visits each station periodically, sees that the accounts are correct and that the bills have gone out, and attempts to collect delinquent accounts (R. 96–97, 107, 304, 329). Each station has a separate bank account, checks on which are written by Lightsey, and signed by Holt alone or by Robinson and Lightsey (R. 108–109, 327). After a purchase is made by the station manager, the bill is forwarded to

Lightsey for payment (R. 328). Lightsey, through the service corporation in Hattiesburg, prepares the income tax returns and the reports to the Federal Communications Commission for each station (R. 326–327). Lightsey made the property appraisal of the Montgomery station when Holt purchased it (R. 156–157).

The station managers have day-to-day control of the hiring, firing, and remuneration of their personnel, and of normal purchases (R. 293–294, 328–329). However, Holt and Robinson hire the managers (Robinson himself is the manager of the Montgomery station) and the national advertising representative (R. 339–341, 93).[3] They visit the stations regularly and advise the managers on matters of general policy (R. 93–94, 98–101, 150, 187, 301–304).[4] Robinson is also frequently consulted by phone (R. 303–304). When, after WSIM changed owners, the Union sought to discuss the continuation of its contract and the re-employment of the dismissed technicians with WSIM's station manager, he told them they would "have to talk to Mr. Robinson or Mr. Holt," that Mr. Holt was the "top boss" (R. 93–94). Robinson and

[3] Only the Mobile and Montgomery stations have a national advertising agent (R. 145–147, 340–341).

[4] The following colloquy between the trial court and Donald Givens, manager of WSIM at the time of the injunction proceeding, is revealing (R. 302):

> The COURT. If Mr. Holt comes in and tells you to do something, do you do it?
>
> A. Yes, sir.
>
> The COURT. And, Mr. Robinson, too?
>
> A. I would do it, I guess.

Lightsey did participate in discussions with the Union on these matters (R. 210–211, 213–220).[5]

Holt requires the radio stations to announce that they are members of the Holt Broadcasting Service (R. 86, 104). The gross revenue of the four stations exceeds $100,000 per year (R. 308, 342–343).

ARGUMENT

THE STATE COURT LACKED JURISDICTION TO ENJOIN THE UNION'S PICKETING AND RELATED CONDUCT

In *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 244, 245, this Court held that, when "it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by § 7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8, due regard for the federal enactment requires that state jurisdiction must yield. * * * When an activity is arguably subject to § 7 or § 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board * * *." In the present case, we submit (1) that, although the operations of WAIP alone were not sufficient to satisfy the Board's jurisdictional standards, the Board would have asserted jurisdiction on the basis of the combined operations of WSIM and

[5] Both the first and second station managers of WSIM, Hale and Givens, were former employees of WHHY, the Holt station in Montgomery, and Hale returned to WHHY when Givens took his place. Moreover, after WSIM was acquired by Holt, test equipment and a tape recorder were exchanged between it and WHHY (R. 94–95, 104, 170–171, 295).

the other three stations in the Holt chain; and (2) that the Union's picketing is arguably subject to the limitations of Section 8(b)(7), and its appeals to the station's advertisers arguably protected by Section 7, of the Act. Accordingly, the State courts should have dismissed the instant suit for lack of jurisdiction over the subject matter. See *Hattiesburg Building Council* v. *Broome*, 377 U.S. 126.

1. Under Section 10(a) of the Act, the Board's statutory jurisdiction extends to any unfair labor practice "affecting commerce." However, Section 14(c)(1) added in 1959, permits the Board to "decline to assert jurisdiction over any labor dispute * * * where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: *Provided*, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959." Section 14(c)(2), in turn, provides that nothing "in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory * * * from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction."

Two principles followed by the Board are applicable to this case. First, the Board will assert jurisdiction over an employer operating a radio station if his gross receipts equal or exceed $100,000 a year. *Raritan-Valley Broadcasting Co., Inc.*, 122 NLRB 90. See-

ond, in applying this standard, the Board considers several nominally separate corporations to be a single employer if all, or most, of the following indicia of identity are present: (1) common ownership; (2) common management; (3) interrelation of operations; and (4) centralized control of labor relations. *Sakrete of Northern California, Inc.*, 137 NLRB 1220, 1222, affirmed, 332 F. 2d 902 (C.A. 9), petition for certiorari filed, No. 556, this Term; Twenty-first Annual Report, National Labor Relations Board (1956), 14–15.[6]

Each of these criteria was satisfied here. Charles Holt is the majority stockholder of all four stations and sole owner of a corporation which renders accounting and management services to them; both Mrs. Holt and Bob Robinson are also common stockholders.

There is common management: Holt is president of four of the companies and secretary of the fifth, while Stanley Lightsey serves as treasurer and comptroller of all five.

The operation of the stations is under close central control. Holt and Robinson hire the station managers and regularly visit them to advise on matters of general policy. Each station sends daily reports to Lightsey, who pays their bills and prepares their in-

[6] The validity of this approach has been sustained by several courts of appeals. In addition to *Sakrete*, see *National Labor Relations Board* v. *Royal Oak Tool & Machine Co.*, 320 F. 2d 77, 80–81 (C.A. 6); *National Labor Relations Board* v. *Jones Sausage Co.*, 257 F. 2d 878, 879–880 (C.A. 4); *National Labor Relations Board* v. *A. K. Allen Co.*, 252 F. 2d 37, 38–40 (C.A. 2).

come tax and F.C.C. returns. All stations announce that they are members of the Holt Broadcasting Service, thereby representing themselves to the public "as one integrated enterprise" (*Checker Cab Co.*, 141 NLRB 583, 586–587; *Overton Markets*, 142 NLRB 615, 618–619).

Finally, there is centralized control of labor relations. For, while day-to-day employment matters are left to the station managers, Holt, Robinson and Lightsey have sole authority to negotiate with unions.

In these circumstances, it is plain that the Board would find that the connection between the various stations was sufficient to make them a single employer for jurisdictional purposes. See *The Family Laundry, Inc.*, 121 NLRB 1619; *Canton, Carp's, Inc.*, 125 NLRB 483; *V.I.P. Radio, Inc.*, 128 NLRB 113; *Perfect T.V., Inc.*, 134 NLRB 575; *Checker Cab Co.*, 141 NLRB 583; *Overton Markets*, 142 NLRB 615.[7] Common control of this kind, which is not merely potential, but actual, clearly affords a sufficient basis for a single employer finding. See *Sakrete of Northern California* v. *National Labor Relations Board*, 332 F. 2d 902 (C.A. 9), enforcing, 137 NLRB 1220, petition for certiorari filed, No. 556, this Term; *The Family Laundry, Inc.*, *supra*.[8]

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[7] As the Court observed in *National Labor Relations Board* v. *Stowe Spinning Co.*, 336 U.S. 226, 227: "Interlocking directorates and family ties make the four equal one for our purposes."

[8] The judicial decisions cited by respondent (Reply to Government's Memorandum, 9) do not hold that power to control day-to-day operations is necessary before separate corporations

Respondent contends (Brief in Opposition 18–19, and Reply to Government's Memo, 6, 13–20) that, in applying the criteria of interrelation of operations and centralized control of labor relations, the Board has required that there be uniformity in labor conditions among the various companies and an interchange of employees—factors which are absent here (but see n. 5, p. 6, *supra*). The cases cited by respondent, however,[9] reflect the application of jurisdictional yardsticks which were abandoned by the Board in 1958. At that time, in response to this Court's decision in *Guss* v. *Utah Labor Board*, 353 U.S. 1,[10] the Board promulgated new standards under which it now exercises a larger measure of its legal jurisdiction. See Twenty-third Annual Report, National Labor Relations Board (1958), 7–9. It has not only lowered the dollar-volume prerequisite, but has also discarded altogether the requirements that there be uniformity of labor conditions at the local level and an interchange of employees before two entities may

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may be considered a single employer under the Act. They merely hold that common ownership plus a potentiality for common control is not sufficient. Much more has been shown here, including actual common control.

[9] Respondent relies principally on six cases: *Central Dairy Products Co.*, 114 NLRB 1189; *Toledo Service Parking Co.*, 96 NLRB 263; *Consolidated Gas Co.*, 107 NLRB 148; *Goodman's, Inc.*, 101 NLRB 332; *Clark Concrete Corp.*, 116 NLRB 321; *Modern Linen & Laundry Service, Inc.*, 110 NLRB 1305.

[10] In *Guss*, the Court held that the states were without power to step in when the Board had declined to assert its jurisdiction. The states now have such power by virtue of Section 14(c)(2), added in 1959 (p. 7, *supra*).

be treated as a single employer for jurisdictional purposes.

Thus, in *The Family Laundry, Inc.*, 121 NLRB 1619 (1958), the Board found that several laundry and linen supply companies constituted a single employer—by virtue of common stock ownership, interlocking officers and directors, and central control and supervision over general matters—even though there was no interchange of employees and each company was operated independently with respect to local matters. In *Canton, Carp's, Inc.*, 125 NLRB 483 (1959), the Board treated several stores as a single employer, albeit there was no interchange of employees and each manager had the right to determine his employees' terms and conditions of employment and had exclusive control over their hire and discharge. The Board concluded that the lack of a common labor relations policy at the local level was outweighed by other evidence establishing a single employer relationship, *i.e.*, common ownership, centralized control of nonlabor matters, and purchasing through a common affiliated organization. And, in *Overton Markets, Inc.*, 142 NLRB 615 (1963), the Board found that seven companies operating ten grocery stores were a single enterprise, notwithstanding the lack of employee interchange and of common control over employment conditions at the local level; the Board relied, *inter alia*, on the fact that the stores were owned or controlled by members of the same family, and were represented to the public as a single entity by their use of the same trade name, joint weekly newspaper advertising, and

identical special sales. As we have demonstrated, the evidence here shows a comparable degree of integration among the four stations.

In sum, on the record here, it is reasonably certain that the Board would consider the four stations as a single employer for jurisdictional purposes, and, since the total revenue of the combined enterprise exceeds $100,000, assert jurisdiction over all the stations.

The Board has established a procedure whereby the parties to a proceeding before a State court or agency may file a petition with the Board for an advisory opinion on whether it would assert jurisdiction over the controversy involved. See 29 CFR 102.98; *Jemcon Broadcasting Co.*, 135 NLRB 362; *Hartford Bldg. Maintenance Co.*, 145 NLRB No. 140, 55 LRRM 1173; but cf. *National Bulk Carriers*, 134 NLRB 1186. At the very least, the State court should have permitted the Board to decide the question in the first instance.

Nor is a different conclusion warranted by the court's finding that, since the Union did not specifically allege that WSIM's business equaled or exceeded the Board's $100,000 yardstick, it had not overcome the Alabama rule that "every reasonable intendment not contradicted by the face of the pleadings will be made in favor of jurisdiction" of the State court (Pet. 22a–23a). This procedural rule cannot bar this Court from determining the merits of the Union's claim of preemption. For, irrespective of the precise language of its pleading, the

Union contended throughout that the Board had jurisdiction over the business involved and was permitted to introduce evidence to show that the ties among the four stations were such as to constitute them a single employer under the Board's standards. In these circumstances, it would be wholly unrealistic to conclude that the preemption defense had not been adequately raised in the State courts.

2. It is equally clear that the conduct involved is regulated by the National Labor Relations Act. At the time of the picketing the Union did not represent any of WSIM's employees, and it was alleged that the Union had sought recognition and a contract despite its lack of majority status (Brief in Opposition, 4). Plainly, therefore, the picketing here "was arguably subject to" Section 8(b)(7) of the Act, which regulates recognitional picketing. In addition, the appeals made to the station's advertisers appear to be activity which Congress either affirmatively protected or deliberately decided to leave free of restraint. See *National Labor Relations Board* v. *Servette*, 377 U.S. 46; *Local 20, Teamsters* v. *Morton*, 377 U.S. 252, 258–260.[11]

[11] The applicability of the National Labor Relations Act is not affected by the circumstance that, since one employee is now employed by WSIM in its engineering department, the Board may find that that department no longer constitutes an appropriate unit for bargaining purposes (Reply to Government's Memo. 20). Even if the Board were unable to establish a bargaining unit for the employees whom the Union sought to represent, the Act would still regulate the Union's use of picketing and related activity to secure representation

The Supreme Court of Alabama did not reach the question whether the State court could assume jurisdiction "on the basis of facts claimed to have been in violation of this state's Right to Work Law" (Pet. 23a). That aspect of the case, however, is fully disposed of by this Court's observation in *Retail Clerks, Local 1625* v. *Schermerhorn*, 375 U.S. 96, 105:

> * * * picketing in order to get an employer to execute an agreement to hire all-union labor in violation of a state union-security statute lies exclusively in the federal domain (*Local Union 439* v. *Farnsworth & Chambers Co.*, 353 U.S. 969, and *Local No. 438* v. *Curry*, 371 U.S. 542), because state power, recognized by § 14 (b), begins *only with actual negotiation and execution of the type of agreement described by § 14(b)*. Absent such an agreement, conduct arguably an unfair labor practice would be a matter for the National Labor Relation Board under *Garmon*. [Emphasis in original.]

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rights. See *National Labor Relations Board* v. *Local 542*, 331 F. 2d 99, 104–106 (C.A. 3), certiorari denied, No. 376, this Term, October 26, 1964.

CONCLUSION

For the reasons stated, the judgment of the Supreme Court of Alabama should be reversed.

Respectfully submitted.

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DECEMBER, 1964.

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Supreme Court of the United States

OCTOBER TERM, 1964.

No. 61

RADIO AND TELEVISION BROADCAST TECHNICIANS LOCAL UNION 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL.,

Petitioners,

versus

BROADCAST SERVICE OF MOBILE, INC.,

Respondent.

On Writ of Certiorari to the Supreme Court of Alabama.

BRIEF OF RESPONDENT.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964.

No. 61.

RADIO AND TELEVISION BROADCAST TECHNICIANS LOCAL UNION 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, ET AL.,

Petitioners,

versus

BROADCAST SERVICE OF MOBILE, INC.,

Respondent.

On Writ of Certiorari to the Supreme Court of Alabama.

BRIEF OF RESPONDENT.

I.

OPINIONS BELOW.

The opinion of the Supreme Court of Alabama (R 402 et seq.) is quoted at ... Ala. ....., 159 So. 2d 452.

The Circuit Court of Mobile County, Alabama rendered a final judgment in this cause on March 6, 1964. (Appendix A.)

II.

QUESTIONS PRESENTED FOR REVIEW.

1. Does a state court have jurisdiction to determine its jurisdiction over an action for an injunction and damages brought by an employer pursuant to an Act of Congress providing that nothing in the National Labor Relations Act shall be deemed to prevent or bar state courts from assuming and asserting jurisdiction over any labor dispute involving any class of employers over which the National Labor Relations Board has declined to assert jurisdiction?

2. May a state court require a party to follow a uniform rule of pleading requiring the pleading of facts to support a plea in abatement to the jurisdiction of the court where the plea attempts to allege federal preemption?

3. May a state court make a factual determination of whether a particular employer belongs to "any class or category of employers" over which the National Labor Relations Board has declined to assert jurisdiction?

III.

STATUTES.

Labor Management Relations Act of 1947, as amended:

Section 14(c)(1):

The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the

Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: Provided, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

Section 14(c)(2):

Nothing in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.

IV.

STATEMENT OF THE CASE.

A.

The Dispute.

Broadcast Service of Mobile, Inc., Respondent, herein called Broadcast, is an Alabama corporation and is engaged in the radio broadcast business in the City of Prichard, Mobile County, Alabama, and owns and operates radio station WSIM, Prichard, Alabama. (R 25, 70.)

Radio and Television Broadcast Technicians Local Union 1264, International Brotherhood of Electrical Workers, AFL-CIO, herein called Local 1264, is an unincorporated association and transacts business in Mobile County, Alabama. (R 25, 70.)

Prior to August 1, 1962, Broadcast purchased certain assets of Prichard Broadcasting Company, Inc., operators of radio station WAIP in Prichard, Alabama; WAIP ceased broadcast operations prior to August 1, 1962. (R 71.) David Fridge, a radio technician employed by Prichard Broadcasting Company, Inc., was terminated by Prichard Broadcasting Company, Inc., on July 31, 1962. (R 152.) Fridge executed a release to Prichard Broadcasting Company, Inc., for any compensation due Fridge under any employment or contract of employment with Prichard Broadcasting Company, Inc. (R 198.)

Broadcast employed John M. Hale as its manager. (R 84.) Hale was in charge of the operations of Station WSIM in Prichard. (R 100, 112, 113, 114, 127-8, 142, 185, 328-9, 340.) Hale selected the employees to commence operations in Prichard. (R 112, 113, 127, 185.) Hale determined not to employ Fridge because of Fridge's apparent poor work while employed by Prichard Broadcasting Company, Inc. (R 125-6, 138-9.)

On August 1, 1962, Broadcast commenced broadcast operations in Prichard, Alabama, under the call letters WSIM. (R 26, 71.)

On August 3, 1962, two days after Broadcast went on the air, Local 1264's business agent, Smith, and Fridge called on Hale. (R 131, 158, 160, 252.) Smith informed Hale that Broadcast had a contract with Local 1264 and that as far as Local 1264 was concerned, Fridge was an employee of Broadcast and since Fridge was there, Local 1264 was going to let Broadcast use Fridge. (R 131.) Hale informed Smith and Fridge that he did not understand the legal implications concerning Fridge and the alleged contract with Local 1264. (R 131, 160.)

Thereafter, Local 1264 admitted that it did not have a collective bargaining agreement with Broadcast, and requested that Broadcast recognize Local 1264 and negotiate a collective bargaining agreement with Local 1264. (R 134-5, 210.) Local 1264 did not at any time claim to represent any employee of Broadcast. (R 135, 284.) Local 1264's avowed intent was to require Broadcast to employ Fridge; Local 1264 was unconcerned with the employee Fridge was to replace. (R 136-7.)

Broadcast did not recognize Local 1264 as the collective bargaining representative of Broadcast's employees. Broadcast did not employ Fridge.

On August 10, 1962, Local 1264 commenced picketing Broadcast's office. (R 27, 72.) None of the persons who picketed Broadcast was or had ever been an employee of Broadcast. (R 27, 72.) Local 1264 admitted that the picketing and other activity was for the purpose of causing Broadcast to employ Fridge and to cause Broadcast to sign a collective bargaining agreement with Local 1264,

although Local 1264 never claimed to represent any employee of Broadcast. (R 230, 235-6, 275, 284.)

Local 1264 admitted, and Fridge and Business Agent Smith testified, that Local 1264 since August 10, 1962, had by picketing, letters addressed to persons, firms and corporations and by personal contact sought to effect a boycott of Broadcast and to cause persons doing business with or desiring to do business with Broadcast to cease doing business with Broadcast or to refrain from doing business with Broadcast. (R 27, 73, 202-3, 285-7.)

Representatives of Local 1264 in talking with Broadcast's advertisers emphasized that the advertisers should use union stations for the benefit of the advertisers' business. (R 313.) Local 1264's representatives told advertisers that the advertisers' business would be interfered with if word got around that the advertisers did not patronize union stations. (R 313.) A substantial number of persons who had formerly advertised over Broadcast ceased advertising over Broadcast immediately after a personal visit by a representative of Local 1264 or after the receipt of a boycott letter from Local 1264. (R 312-3, 320, 333, 344, 346.)

B.

Jurisdictional Facts.

Broadcast's gross income is substantially less than $100,000.00 per annum. (R 343.) For the period of August 1, 1962, through March 31, 1963, Broadcast's total sales were approximately $30,000.00. (R 343.)

Holt owns stock in and is an officer of four corporations, each of which operates a radio station. (R 324-6, 348.) The stations are located in Prichard, Alabama; Montgomery, Alabama; McComb, Mississippi; and Hattiesburg, Mississippi. (R 324-5.) Holt owns one hundred per cent of the stock of Air Enterprizes, Inc., a service organization, which performs accounting services for the four corporations. (R 324.) Each corporation has its own manager who operates the corporation's radio station. (R 91, 112, 113, 127, 142, 293-5, 303; 328.) The manager selects and discharges his own personnel. (R 127-8, 185, 293, 303, 328, 329, 340.) The manager sets the wages for his personnel. (R 128, 293, 329.) The manager determines when his employees will get a vacation or days off. (R 294.) Wages are not uniform among the several corporations. (R 328-9.) Each corporation maintains its own separate set of books in the city where it operates its radio station. (R 97, 327-8.) Each corporation maintains a separate payroll, (R 327) files separate federal income and social security tax returns, (R 326, 327) and each files separate reports with the Federal Communications Commission. (R 326.) Each corporation's funds are kept separately. (R 327.) Each corporation has a bank account in the city where it operates its radio station and each corporation also has a separate account in Hattiesburg, Mississippi. (R 327.) Each station manager makes his own purchases and approves his own bills for payment. (R 328.)

Air Enterprizes, Inc., performs accounting and auditing services for the various corporations. (R 340.) Each operating corporation pays its proportionate share of the

expenses of Air Enterprizes, Inc. (R 328.) Some of the stations have national advertising representatives and some have none. (R 340.) All advertising sold by Broadcast was sold in and about Prichard, Alabama. (R 347.) Broadcast has had no national advertising. (R 347.) One of the stations is an affiliate of the American Broadcasting Company; one is an affiliate of the National Broadcasting Company and two have no affiliation. (R 347.) Holt and Lightsey visit various stations periodically. (R 329.) They visit some stations more than others. (R 329.)

The Trial Judge summarized the testimony of the station manager:

> I think what this witness has said is that he runs that station and that is his job and nobody tells him insofar as details are concerned how to run it, and I don't imagine anybody is going to as long as he's doing a good job of making money, but I imagine if you start losing money then somebody is going to get concerned. Is that about what you said? (R 303.)

In confirming the Trial Judge's statement the station manager testified:

> MR. GIVENS:
>
> I do the hiring and firing, I don't ask nobody who I hire, who I fire. I do it for the purpose of making money, which I haven't been too successful at for a number of reasons. It's why we are in business. If I have to call Bob or anybody else—if I had to call even you in town here before I did anything, what would they have me there for? And, if things come up I handle them myself—I mean, that is what I'm there for.

THE COURT:

You are not trying to say that your orders cannot be countermanded?

MR. GIVENS:

No, sir.

THE COURT:

You are just saying that the way things are going now nobody has bothered you. They've told you to run the station.

MR. GIVENS:

Yes, sir. (R 303.)

Each station manager has complete responsibility for the day to day operation of his station. (R 302, 303, 328.)

V.

BRIEF OF ARGUMENT.

Congress through Section 14(c) of the Labor Management Relations Act, 1947, 29 U.S.C.A. 164(c) eliminated the "vast no-man's-land" created by *Guss v. Utah Labor Relations Board,* 1957, 353 U.S. 1, 1 L. Ed. 2d 601 and *San Diego Building Trades Council v. Garmon,* 359 U.S. 236, 3 L. Ed. 2d 775, by conferring jurisdiction on state courts over "unfair labor practies" and "questions of representation" involving classes of employers over whom the National Labor Relations Board had declined to assert jurisdiction because the operations of the class of employers did not have a pronounced impact on commerce. Cox, *Landrum-Griffin Amendments to the National Labor Relations Act,* 44 Minn. L. Rev. 257-262. State courts determine their

own jurisdiction by applying applicable decisions of the Board and federal appellate courts reviewing orders of the Board. Id.

In *Raritan Valley Broadcasting Company, Inc.*, 1958, 122 N.L.R.B. 90, the Board declined to assert jurisdiction over radio stations that have a gross volume of business of less than $100,000 per year because the $100,000 gross volume of business standard would cover "all labor disputes involving such enterprises which tend to exert a pronounced impact on commerce."

The Alabama Supreme Court found that Broadcast's gross volume of business was less than $100,000 and therefore asserted jurisdiction.

Neither the petitioners nor the United States have demonstrated how the "labor dispute", alleged "question concerning representation", or the "unfair labor practices" of Local 1264 will "exert a pronounced impact on commerce". No pronounced impact on commerce in fact exists.

The Board treats separate corporations which are closely related as being a single employer where the enterprises are substantially integrated. In determining whether sufficient integration exists, the Board considers "interrelation of operations; centralized control of labor relations; common management; and, common ownership or financial control." "No one of these factors has been held to be controlling, but the Board opinions have stressed the first three factors, which go to show the

'operational integration', particularly centralized control of labor relations." *Twenty-First Annual Report of the National Labor Relations Board,* 14-15.

The Board has considered several separate corporations as a single employer where the operations of one corporation are entirely or substantially dependent upon the other for its work, purchases or sales; the corporations occupy joint or adjacent facilities; share common rank and file employees as distinguished from officers and managers, and have uniform conditions of employment.

Here, each operating corporation operates a radio station in a city widely separated from any of the other radio stations. (Appendix B, R 324-6.) None of the operating corporations renders any services or makes any sales to any of the other corporations. There is no network among the several stations and each station manager is in complete charge of the day-to-day affairs of his corporation. (R 190, 303.) Working conditions of the employees of the separate corporations are not uniform. (R. 328-9.)

In reviewing Board orders the courts of appeals have stressed the actual control of day-to-day operations of related corporations and actual integration of operations making one corporation dependent upon the other *Employing Lithographers of Greater Miami v. National Labor Relations Board,* 5 Cir., 1962, 301 F.2d 20, 28-9; *Bachman Machine Company v. National Labor Relations Board,* 8 Cir., 1959, 266 F.2d 599, 605; *Miami Newspaper Pressmen's Local No. 46 v. National Labor Relations Board,* C.A.D.C. 1963, 322 F.2d 405, 408. When these factors were

not found, the Board order was not enforced. *J. G. Roy & Sons Company v. National Labor Relations Board*, 1 Cir., 1958, 251 F.2d 771.

VI.

ARGUMENT.

A.

The Courts Of The Several States Have Jurisdiction Over Labor Disputes Involving An Employer Whose Operations Do Not Have A Pronounced Impact On Interstate Commerce.

In *Garner v. Teamsters Local 776*, 346 U.S. 485, 98 L. Ed. 228, this Court held that the National Labor Relations Act conferred exclusive jurisdiction on the National Labor Relations Board, with certain exceptions, over all labor disputes that affected interstate commerce.

Prior to 1959 the Board declined to assert its full jurisdiction over many employers because of monetary or political reasons. In *Guss v. Utah Labor Relations Board*, 1957, 353 U.S. 1, 1 L. Ed. 2d 601, this Court held that the National Labor Relations Act pre-empted the jurisdiction of state courts over an employer whose operations affected interstate commerce although the operations of the employer were predominantly local and the Board had declined to exercise its jurisdiction.

Guss created "a vast no-man's-land subject to regulation by no agency or court." This "no-man's-land" e com-

passed labor disputes involving employers over whom the Board refused to assert jurisdiction and over whom *Guss* prevented state courts from asserting jurisdiction. This "vast no-man's-land" was enlarged by this Court's decision that state courts had no jurisdiction where the activity in question was "arguably" within the jurisdiction of the Board. *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 3 L. Ed. 2d 775.

In 1959, subsequent to this Court's pronouncement of its "arguably" test of exclusive jurisdiction, Congress established a clear fracture between labor disputes over which the Board has exclusive jurisdiction and over labor disputes which are subject to state regulation. Congress needed, and in Section 14(c)(1) and 14(c)(2) of the Labor Management Relations Act 1947 as amended 1959, 29 U.S.C.A. 164(c)(1) and (2) provided, a clear and simple test to eliminate the "vast no-man's-land". Congress amended the Labor Management Relations Act, 1947, 29 U.S.C.A. 164(c)(1) and (2) in 1959 to provide:

> Section 14(c)(1):
>
> The Board in its discretion, may by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers where, in the opinion of the Board, the effect of such labor dispute in commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: Provided, that the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

Section 14(c)(2):

> Nothing in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.

Under this unequivocal statute a state court is not barred from asserting jurisdiction even if the Board asserts jurisdiction over some phase of the labor dispute. *Cf. Smith v. Evening News Association*, 371 U.S. 195, 197-8, 9 L. Ed. 2d 246; *Incres Steamship Co., Ltd. v. International Maritime Workers Union*, 371 U.S. 804, 9 L. Ed. 2d 557, where this Court held that a state court had jurisdiction to enjoin picketing and other activity directed against a foreign flag ship in New York Harbor although the union representatives boarded American tugs, "and at least for a time persuaded the tug crews to stop disembarking" the foreign ship's passengers. *Incres Steamship Co. v. International Maritime Workers Union*, 1961, 10 N.Y. 2d 218, 176 N.E. 2d 719.

In *Raritan Valley Broadcasting Company, Inc.*, 1958, 122 N.L.R.B. 90, the Board declined to assert jurisdiction over radio stations that have a gross volume of business of less than $100,000 per year because the $100,000 gross volume of business standard will cover "all labor disputes involving such enterprises which tend to exert a pronounced impact on commerce."

The contention of petitioners and the United States that the operations of separate legal entities must be considered

by a state court in determining whether a particular employer falls within "any class or category of employers" as used in Section 14(c)(1), if accepted, would open Pandora's box and nullify 14(c)(1) and 14(c)(2).

Congress delfberately chose the word "employer" for use in Section 14(c). Congress itself defined "employer" in Section 2(2) of the Labor Management Relations Act, 29 U.S.C.A. 152(2):

> The term "employer" includes any person acting as an agent of an employer, directly or indirectly but shall not include . . .

This definition does not peripherally make separate legal entities an "employer" for jurisdictional purposes. Had Congress intended to establish an "enterprise" coverage it could and would have done so just as it established separate "employer" and "enterprise" coverages in the Fair Labor Standards Act. 29 U.S.C.A. 203(d) and (r).

The words of the Board in *Siemons Mailing Service*, 1958, 122 N.L.R.B. 81, 83, in justifying the adoption of jurisdictional standards is relevant here:

> . . . Experience has demonstrated that an *ad hoc* or case-by-case approach inevitably leads in practice to the establishment of roughly drawn standards or tests, simply by virtue of the fact that previous decisions are urged upon the Board as precedent by parties before the Board, and relied on by the Board to justify its determinations. Experience has shown, however, that jurisdictional guide lines thus established are extremely time and energy consuming to

apply, and result in confusion and uncertainty as to exactly where the dividing line will be drawn in particular cases, not only for parties appearing before the Board but for members of its staff as well, with the result that a disproportionate share of the available resources of the Board is utilized in the investigation of jurisdictional questions. The Board's experience under its 1950 and 1954 jurisdictional standards demonstrated that the utilization of jurisdictional standards, if simply drawn and relatively few in number, significantly reduces the amount of time, energy, and funds expended by the Board and its staff in the investigation and resolution of jurisdictional issues, thus enabling the Board to devote a greater portion of its resources to the processing of substantive problems in a greater number of cases.

A case-by-case approach to determine whether separate legal entities constitute a single "employer" for the purpose of determining whether the Board or states will have jurisdiction under Section 14(c) will lead in practice to the establishment of roughly drawn tests.

Experience has shown that jurisdictional guide lines established on a case-by-case approach are extremely time and energy consuming to apply, and result in confusion and uncertainty as to exactly where the dividing line will be drawn in particular cases. On the other hand, the utilization of the jurisdictional standards enunciated by the Board for particular types of industry is simple to apply and will result in a clear and uniform fracture between Board jurisdiction and state jurisdiction.

We submit that this Court should adopt the reasoning of the Supreme Court of Alabama and establish once and for all a clear fracture between state and federal jurisdiction in labor relations. To do less will result in a not so vast no-man's-land but none the less a no-man's-land in which some employers, some employees and some unions will be deprived of any effective remedy.

B.

Assuming, Arguendo, That The Supreme Court Of Alabama Erred In Refusing To Consider The Operations Of Several Separate Corporations For Jurisdictional Purposes, This Court Should Remand This Cause To The Supreme Court Of Alabama With Directions To Apply Appropriate Law To The Facts.

The petitioners and the United States contend that the Board would conclude that the five separate corporations of the Holt Broadcasting Service constitute a single employer for purposes of the Board's discretionary jurisdictional rules. The Alabama Supreme Court did not make any findings of fact or conclusions of law on this contention; doubtless because, under its views of the applicable law, this contention was immaterial.

The petitioners and the United States ask this Court to review the evidence pertaining to the corporate structure, ownership and *modus operandi* of each of five corporations, and then determine in the first instance whether the Board would consider the five separate corporations as a single employer for jurisdictional purposes.

It is not the function of this Court to make an independent examination of this entire record and to pass on the evidence without its prior consideration by the lower court. *National Labor Relations Board v. Donnelly Garment Co.*, 330 U.S. 219, 237, 91 L. Ed. 854, 867-8. Nor is it the function of this Court to apply Board decisions to the facts of this cause in the first instance. *National Labor Relations Board v. Pittsburgh Steamship Company*, 337 U.S. 656, 661, 93 L. Ed. 1602, 1607. If this Court should determine that the Supreme Court of Alabama erred in refusing to look to the operations of the several separate corporations, this Court should remand this cause to the Supreme Court of Alabama with directions to apply the appropriate law to the facts.

C.

Broadcast Is An Employer For Jurisdictional Purposes.

In the *Twenty-First Annual Report of the National Labor Relations Board*, the Board said at pages 14-15:

> In applying the present jurisdictional standards, the Board early reaffirmed the long-established practice of treating separate concerns which are closely related as being a single employer for the purpose of determining whether to assert jurisdiction. The question in such cases is whether the enterprises are sufficiently integrated to consider the business of both together in applying the jurisdictional standards.
>
> The principal factors which the Board weighs in deciding whether sufficient integration exists include the extent of:

1. Interrelation of operations;
2. Centralized control of labor relations;
3. Common management; and,
4. Common ownership or financial control.

No one of these factors has been held to be controlling, but the Board opinions have stressed the first three factors, which go to show 'operational integration,' particularly centralized control of labor relations. The Board has declined in several cases to find integration merely upon the basis of common ownership or financial control.

A myriad of cases exist wherein the Board has attempted to apply the four enumerated criteria. Some cases speak only of ultimate facts and are useless as precedents in determining the meaning of the four criteria, much less as a precedent to apply to a particular set of evidentiary facts. At best the Board decisions result in confusion and uncertainty as to exactly where the dividing line will be drawn in a close case. The Board decisions are anything but consistent. Compare *Orkin "The Rat Man" Incorporated*, 1955, 112 N.L.R.B. 762 with *Orkin Exterminating Company, Inc.*, 1956, 115 N.L.R.B. 622. In the first *Orkin* case the Board, after an exhaustive analysis of the relationship of the employer involved with twenty-eight other Orkin corporations, declined to combine the operations of all twenty-eight corporations for jurisdictional purposes. In the second *Orkin* case after another exhaustive analysis of the interrelationship of the same Orkin corporations, the Board combined all Orkin corporations for jurisdictional purposes. If the truth be known, the dividing line will probably be drawn in accordance with the desires or impressions of the particular

staff member of the Board member whose lot the case is assigned for decision. If the staff member thinks that federal power should be extended to its utmost, he can unquestionably find precedent to support a finding of sufficient integration. If on the other hand, the staff member chooses to exercise judicial restraint, the line he draws will likewise be adequately supported by Board precedent but will relinquish jurisdiction to the states.

Due to the Board's laudable policy of disposing of cases on an informal basis where the Board does not choose to assert jurisdiction, few cases reach the decision stage in which the Board does not exercise jurisdiction.

Above all an evaluation of the evidentiary facts upon which the ultimate facts are based is necessary to a proper understanding of the Board's criteria and the way in which the Board itself applies its criteria.

1. Interrelation of Operations.

Interrelation of operations consists of one enterprise performing a service for, or making sales to, an affiliated company. *Venus Die Engineering Company*, 1954, 110 N.L.R.B. 336.

In many cases relying on interrelation of operations one corporation was entirely or substantially dependent upon the other for its work or sales,[1] the corporations occupied

[1] National Labor Relations Board v. Jones Sausage Company, 4 Cir., 1958, 257 F.2d 878; National Labor Relations Board v. Somerset Classics, 2 Cir., 1952, 193 F.2d 613, cert. deni., sub nom.: Modern Manufacturing Co., Inc. v. National Labor Relations Board, 344 U.S. 816, 97 L. Ed. 635; Corfu Manufacturing Corporation, 1961, 48 L.R.R.M. 1584; Canton Carp's, Inc., 1959, 125 N.L.R.B. 483. Cf. J. G. Roy & Sons Company v. National Labor Relations Board, 1958, 1 Cir., 251 F.2d 771.

joint or adjacent facilities,[2] or shared common rank and file employees as distinguished from officers and managers.[3]

Here, each operating corporation operates a radio station in a city widely separated from any of the other radio stations. (Appendix B, R. 324-6.) None of the operating corporations renders any service or makes any sales to any of the other corporations. There is absolutely no evidence of the existence of a "network" among the several stations or between any two of the stations. The evidence affirmatively establishes that each station chooses its own program material. (R. 190.)

The only evidence, if any, of integration of operations is that a separate service corporation performs some, but not all, of each operating corporation's accounting. (R. 97, 327-8, 340.). The Board and the courts have consistently held that centralized bookkeeping does not constitute "interrelation of operations." *Bachman Machine Company v. National Labor Relations Board*, 8 Cir., 1959, 266 F.2d 599, 601, 605; *Clark Concrete Construction Corporation*, 1956, 116 N.L.R.B. 321, 322; *Modern Linen & Laundry Service, Inc.*, 1954, 110 N.L.R.B. 1305, 1306; *Spartan Cafeteria Corporation*, 1954, 109 N.L.R.B. 166, 167.

2. Centralized Control of Labor Relations.

"Labor Relations" as used by the Board means wage rates, vacations, and other employee benefits.

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[2] National Labor Relations Board v. Jones Sausage Company, 4 Cir., 1958, 257 F.2d 878; Venus Die Engineering Company, 1954, 110 N.L.R.B. 336; National Labor Relations Board v. A. K. Allen Co., Inc., 2 Cir., 1958, 252 F.2d 37; Crenshaw's, Inc., 1956, 115 N.L.R.B. 1374, Hamilton Brothers, Inc., 1961, 130 N.L.R.B. 233; Edward Small Productions, Inc., 1960, 127 N.L.R.B. 283.

[3] Venus Die Engineering Company, 1954, 110 N.L.R.B. 336, Hamilton Brothers, Inc., 1961, 130 N.L.R.B. 233.

In *Central Dairy Products Co.*, 1955, 114 N.L.R.B. 1189, Central Dairy Products was "managed by the Southwest Management Company" which "was created for the sole purpose of administering" Central Dairy Products and two other companies engaged in a similar line of business. Corporate officers of Central Dairy Products, Southwest Management Company, and the two affiliated companies were identical. The Board concluded that each corporation was a separate enterprise for jurisdictional purposes. In so finding, the Board at 114 N.L.R.B. 1189, 1190, relied on the following:

> The record is devoid of evidence which would show centralized control of labor relations among these corporations with respect to the hiring and discharging of employees, setting wage rates, and establishment of vacations and other employment benefits. Similarly there is no indication of interchange of employees among the corporations. Under these circumstances, the facts that the 4 corporations have the same officers and that 3 of the corporations are managed by a fourth are not sufficient evidence to establish that the 4 corporations constitute a single employer within the meaning of the Act or that the Employer is a part of a single integrated enterprise.

Here, Broadcast's station manager and the station manager of each of the other corporations have full charge of labor relations as defined by the Board; each station manager determines his employees' rates of pay, hours of work, vacations, holidays, and other working conditions; each station manager has and exercises the unfettered authority to hire and discharge employees. (R 127-8, 185, 293-4, 303, 328-9, 340.) Working conditions are not uniform among the several corporations. (R 328-9.)

The Board has consistently considered centralized control of labor relations and the presence or absence of a common labor policy as a salient factor in determining whether separate legal entities constitute a "single" employer for jurisdictional purposes. *Twenty-First Annual Report of the National Labor Relations Board*, 15. Cases cited by the petitioners and the United States demonstrate the importance of this factor. *Sakrete of Northern California, Inc. v. National Labor Relations Board*, 9 Cir., 1964, 332 F.2d 902, where the president of the two corporations involved exercised authority on local matters such as the hiring and firing of employees, setting wage rates and conditions of employment; *Family Laundry, Inc.*, 1958, 121 N.L.R.B. 1619, where the employees of the several corporations were covered by a noncontributory pension plan; *V.I.P. Radio, Inc.*, 1960, 128 N.L.R.B. 113, where "general working conditions for all the stations . . . covering such matters as job classifications, overtime, the workweek, holidays, vacations, and so forth" were contained in a document that was posted in each station; *Corfu Manufacturing Corp.*, 1961, 48 L.R.R.M. 1584, where the sole function of one corporation was . . . "to supply production and maintenance employees" to the other; *Perfect T.V. Inc.*, 1961, 134 N.L.R.B. 575, where the corporations were "managed and operated by the same personnel"; *Wash Well No. 2, Inc.*, 1962, 139 N.L.R.B. 417, 421-2, where the president of the five corporations involved delivered an anti-union speech to the employees of one of the corporations that had an alleged independent manager and otherwise personally participated in an unlawful anti-union campaign at other affiliated corporations, in addition there was some transfer of employees

between the corporations in furtherance of unfair labor practices; *P-M Garages, Inc.*, 1962, 139 N.L.R.B. 987, 982, where the employees of the several corporations were all hired subject to the approval of one over all general manager, rates of pay for all employees were the same, and employees were regularly, temporarily and permanently transferred between corporations; *Checker Cab Co.*, 1963, 141 N.L.R.B. 583, where all applicants for employment were screened by the association, working rules were established by the association and the association reviewed employees' conduct; *Overton Markets, Inc.*, 1963, 142 N.L.R.B. 615, where the employees of each corporation were covered by identical and transferable profit sharing and insurance plans.

The contention of Local 1264, and of the United States that Holt, Robinson, and Lightsey have sole authority to negotiate with unions is not supported by the record. Broadcast's manager sought help from his superiors when he was confronted with Local 1264's legal contention that Local 1264 had an existing collective bargaining agreement with Broadcast and that Fridge was an employee of Broadcast. (R 131-2, 139, 160.) Broadcast's Mobile attorney was also consulted for legal advice on Local 1264's contentions. (R 119.) Negotiations were next conducted between Local 1264, Broadcast's manager, and Broadcast's local attorney without the presence of any corporate official. (R 215-6.)

Indeed, even if a single officer controlled the labor relations of all four operating stations in connection with negotiations with unions, such fact would be insufficient

to justify considering the business of the other three stations in applying jurisdictional standards. *Bachman Machine Company v. National Labor Relations Board*, 8 Cir., 1959, 266 F.2d 599, 605. *Cf. Miami Newspaper Printing Pressmen's Local No. 46*, 1962, 138 N.L.R.B. 1346, 1350, 1351, enforced *Miami Newspaper Pressmen's Local No. 46 v. National Labor Relations Board*, C.A.D.C., 1963, 322 F.2d 405, where the Board found that a wholly owned subsidiary of a closely held corporation was a separate employer although an officer of the parent attended bargaining conferences with the subsidiary's union, advised management of the subsidiary on operations and labor relations matters, temporarily assumed charge of the subsidiary's bargaining, and was consulted from time to time by the management of various affiliates in connection with their labor problems.

3. Common Management.

In ascertaining whether affiliated corporations have common management the Board gives little weight to the fact that the officers of the various corporations are the same. Board decisions turn on whether a single individual controls the "day-to-day operations" of more than one corporation. *Goodman's, Inc.*, 1952, 101 N.L.R.B. 352; *Consolidated Gas Company*, 1953, 107 N.L.R.B. 148; *Modern Linen & Laundry Service, Inc.*, 1954, 110 N.L.R.B. 1305; *Central Dairy Products Co.*, 1955, 114 N.L.R.B. 1189; *Clark Concrete Construction Corporation*, 1956, 116 N.L.R.B. 321. The First, Fifth, Eighth and District of Columbia Circuits hold that the power to control the "day-to-day operations" of related corporations is irrelevant;

only the exercise of the power to control the "day-to-day operations" of separate corporations may be considered in determining whether separate corporations are to be considered as a "single employer" under the National Labor Relations Act. *J. G. Roy & Sons Co. v. National Labor Relations Board*, 1 Cir., 1958, 251 F.2d 771, 773-4; *Employing Lithographers of Greater Miami v. National Labor Relations Board*, 5 Cir., 1962, 301 F.2d 20, 28-9, *Bachman Machine Company v. National Labor Relations Board*, 8 Cir., 1959, 266 F.2d 599, 605; *Miami Newspaper Pressmen's Local No. 46 v. National Labor Relations Board*, C.A. D.C. 1963, 322 F.2d 405, 408.

The undisputed testimony in this cause establishes that the individual station manager has full charge of and responsibility for the "day-to-day operations" of his particular station including, but not limited to, the selection and discharge of personnel, the setting of wages, vacations, time off and other working conditions and the making of purchases and sales. (R 127-8, 185, 293-4, 303, 328-9, 340, 347.)

The Trial Judge summarized the entire testimony concerning the duties of the station manager in these words:

> I think what this witness has said is that he runs that station and that is his job and nobody tells him insofar as details are concerned how to run it, and I don't imagine anybody is going to as long as he's doing a good job of making money, but I imagine if you start losing money then somebody is going to get concerned. (R 303.)

The fact that the owners and officers of the various corporations choose the station managers does not detract in the least from the fact that the important "day-to-day operations" of the various corporations are under the direct and sole supervision of the station manager. Obviously, only the owners, officers and directors of several affiliated corporations choose the manager of each particular corporation. Obviously, they will choose the best qualified manager they can obtain. To say that several affiliated and jointly owned corporations should be considered as a single employer for jurisdictional purposes because the owners and officers of the corporation chose the managers and have something to do with the general affairs of the corporation would in substance eliminate the necessity for determining whether commonly owned affiliated corporations are "sufficiently integrated to consider the business of both together in applying the jurisdictional standards."

Moreover, the Board merely considers the responsibility for the "day-to-day operations" only one of the important factors. In *Toledo Service Parking Company*, 1951, 96 N.L.R.B. 263, 264, the Board held that several family owned corporations which operated parking garages under the supervision of one general manager were separate and distinct for jurisdictional purposes and in *Central Dairy Products Co.*, 1955, 114 N.L.R.B. 1189, the Board found insufficient integration to establish a single employer for jurisdictional purposes although three corporations were managed by a fourth.

4. Common Ownership and Financial Control.

Common ownership and financial control is the least significant factor which the Board considers in determining whether two or more corporations are a single employer for jurisdictional purposes. *Twenty-First Annual Report of the National Labor Relations Board,* 15.

Common ownership and financial control like the power to make the major decisions and to employ managers of the separate corporations, if accorded great weight would be conclusive in each case and would result in a policy of considering all affiliated corporations as one employer for jurisdictional purposes. The insignificance of these factors is demonstrated by the fact that the Board does not consider a parent corporation and a wholly owned subsidiary a single employer for jurisdictional purposes unless the other criteria are met. *Goodman's, Inc.,* 1952, 101 N.L.R.B. 352; *Consolidated Gas Company,* 1953, 107 N.L.R.B. 148; *Spartan Cafeteria Corporation,* 1954, 109 N.L.R.B. 166; *Butte Water Company,* 1957, 117 N.L.R.B. 484.

The insignificance accorded financial control explains why the Board has given little weight to centralized bookkeeping. *Bachman Machine Company v. National Labor Relations Board,* 8 Cir., 1959, 266 F.2d 599, 601, 605; *Clark Concrete Construction Corporation,* 1956, 116 N.L.R.B. 321, 322; *Modern Linen & Laundry Service, Inc.,* 1954, 110 N.L.R.B. 1305, 1306; *Spartan Cafeteria Corporation,* 1954, 109 N.L.R.B. 166, 167.

Little weight should be given here to the fact that each of the corporations here has an identical terasurer who is

employed by Air Enterprizes, Inc., and who attempts to see that the money on the books of the several corporations is collected. (R 329.)

An analysis of the citations relied upon by the petitioners and by the United States establishes that each contains evidentiary facts showing substantially more "integration" than exists here or merely contains ultimate facts.

In *Family Laundry, Inc.*, 1958, 121 N.L.R.B. 1619, the Board panel relied heavily on the fact that the New York office maintained "a noncontributory pension plan" which covered employees of the separate corporations. This pension plan established an identity of interest among the employees of the several corporations. Broadcast's manager has authority to make purchases without prior approval of anyone. In *Family Laundry, Inc.*, the manager was required to submit a requisition to the New York office and obtain a purchase order as a prerequisite of making a purchase; in substance he had no authority to make any purchase.

In *Canton, Carp's, Inc.*, 1959, 125 N.L.R.B. 483, the Board was dealing with a retail merchandising chain, one of the affiliated corporations acting "as the wholesaling and warehousing part of the Carp merchandising operations." Most of the purchases of the affiliated corporations were made from the wholesaling and warehousing corporation. Leases were executed in the name of the "parent" corporation and assigned to the new cor-

poration in order to have "somebody responsible" under the lease.

In *V.I.P. Radio, Inc.*, 1960, 128 N.L.R.B. 113, in the words of the Board panel:

> There is a general manager over all the subsidiaries, a network news director, and network director. General working conditions for all the stations are set forth in a document entitled "Herald Tribune Radio Network-Personnel Policies & Practices," adopted in 1959, and covering such matters as job classifications, overtime, the workweek, holidays, vacations, and so forth. * * * Employees at all stations are covered by the same group life insurance and health and medical policies.

Alpha Corporation, 1960, 128 N.L.R.B. 309, involved a wholly owned subsidiary that was formerly a division of its parent. Apparently, none of the parties opposed the Board's finding that the parent and its subsidiary were a single employer for both jurisdictional and unit purposes. The only evidence alluded to in the panel's decision was the fact that parent had transferred employees to the subsidiary upon formation of the subsidiary and that the parent determined whether particular work would be allocated to the subsidiary involved or to another of the parent's subsidiaries. The allocation of work made the subsidiary entirely dependent upon the parent.

In *Corfu Manufacturing Corporation*, 1961, 48 L.R.R.M. 1584, the sole function of one corporation was to supply

production and maintenance employees to the affiliated corporation; all employees of one corporation being recruited, interviewed and hired by the other.

In *Perfect T.V., Inc.*, 1961, 134 N.L.R.B. 575, the employer admitted that the various corporations have "a very, very close interrelated working arrangement, and, in fact, are managed and operated by the same personnel"; in *Perfect T.V.*, the Board made no detailed findings that would help this Court ascertain what evidentiary facts, if any, the Board relied upon in reaching its conclusions.

In *Wash Well No. 2, Inc.*, 1962, 139 N.L.R.B. 417, various laundry routes, substations and contracts were frequently transferred from one corporation to another and one of the affiliated corporations performed laundry and dry cleaning services for another. Although each corporation had its own manager the president and owner of the various corporations spoke to the employees about union organizational efforts, furnished another corporate manager with union withdrawal forms, the president was quoted as threatening to close the business of one corporation if the union was successful and employees were transferred between the corporations in connection with unfair labor practices.

In *P-M Garages, Inc.*, 1962, 139 N.L.R.B. 987, one general manager was responsible for all of the corporations' business; all employees were hired subject to approval of the general manager; the rates of pay among the several corporations were the same; there were frequent temporary and permanent transfers of employees

among the corporations; employees desiring to work after their regular assigned shifts were assigned to work at another corporation's place of business; and, the general manager interrogated employees of the various corporations about their union affiliations.

Checker Cab Co., 1963, 141 N.L.R.B. 583, and *Overton Markets, Inc.*, 1963, 142 N.L.R.B. 615, deserve special attention because each was a three to two decision and each contains factors which may have well caused one of the majority to have joined with the minority and declined jurisdiction.

In *Checker Cab Co.*, 1963, 141 N.L.R.B. 583, members Rodgers and Leedom dissenting, the majority exercised jurisdiction over several employers although none met the jurisdictional standards where the employers had formed an association. All applicants for employment were required to be screened by an association employee before being employed. The association exercised "substantial control over each member's drivers in their day-to-day conduct." The association promulgated rules and regulations which prescribed the method of operating the cab generally and included instructions as to personal cleanliness and driver courtesy and prescribed that uniform caps must be worn and certain articles of clothing must not be worn, prohibited smoking, fighting, drinking intoxicants, pushing a car with a cab, and picking up another fare while there is a passenger in the cab, required the first driver up on a stand to answer the call-box and that a passing driver must stop and answer the telephone at all empty cabstands and required the driver

to refrain from lounging in the rear of his cab. In all there was a total of thirty-nine rules. The association also maintained a Board of Review which passed upon complaints against drivers.

Overton Markets, Inc., 1963, 142 N.L.R.B. 615, pertained to a chain of grocery stores located in a single town. The stores used joint weekly newspaper advertising, identical special sales, common purchasing and had identical and transferable employee profit sharing and insurance plans. Employees and officers of all corporations attended joint meetings where the group insurance plan and profit sharing plan were explained. Three or four employees and one or two store managers employed by the various corporations had worked previously for a different corporation. All had the same accounting firm and attorney. In their dissent, members Rodgers and Leedom pointed out that the majority had not shown the necessary degree of common ownership and control, including control of labor relations which the Board had, in the past, deemed essential before separate entities could be found to be a single employer. The dissent stressed the fact that the "wages, hours and working conditions of the employees of the various stores" were not uniform, and there was no "employee interchange."

Overton Markets, Inc., and *Checker Cab Co.*, demonstrate that a salient criteria is unformity in wages, hours and working conditions and frequent and regular employee interchange. We further submit that it is significant that, at least according to the decisions of the National Labor Relations Board, the majority of the Board did

not deviate from the requirements of uniformity in wages, hours and working conditions and frequent employee interchange until May of 1963, nine months after this cause was filed. We further submit that both *Overton* and *Checker* contain substantially more evidence of integration than exists here.

Court decisions relied upon by the petitioners and by the United States also show substantially more "integration" than exists among the separate corporations here involved.

In *National Labor Relations Board v. A. K. Allen Co., Inc.*, 2 Cir., 1958, 252 F.2d 37, one corporation furnished employees to the other, the various corporations occupied unpartitioned areas on a single floor, shared a common office, stock room and shipping area and used the same office staff, shipping clerk, inspector and timekeeper; all employees punched a common time clock and used the same washroom facilities, the corporations had substantially the same policies with respect to wage rates, working conditions and fringe benefits, notices to employees were posted on a common bulletin board and all employees were covered by the same group insurance policy.

In *National Labor Relations Board v. Jones Sausage Company*, 4 Cir., 1958, 257 F.2d 878, one corporation sold ninety per cent of its products to the other, the two corporations occupied the same building, both corporations had the same general manager and all employees of the two corporations had the same hospitalization and vacation plans.

National Labor Relations Board v. Royal Oak Tool & Machine Company, 6 Cir., 1963, 320 F.2d 77, did not involve a question of jurisdictional amount; the Board held that two corporations were a joint employer and jointly responsible for unfair labor practices where one corporation had created the other by spinning-off a division of its operations; "one of the avowed purposes of the 'spin-off' was to reduce labor cost in the . . . division" and to avoid bargaining with the recognized union; at the time of the "spin-off" there was in effect a single collective bargaining agreement covering all employees.

In *Sakrete of Northern California, Inc. v. National Labor Relations Board*, 9 Cir., 1964, 332 F.2d 902, the Board and the court specifically relied upon the fact that one Avril, who was president of both corporations, did substantially "more than set general policy"; Avril exercised authority on "local matters" such as the hiring and firing of employees, setting wage rates and conditions of employment. Here, the local manager has unfettered authority over all of the local matters controlled by Avril in *Sakrete*.

In the two cases that have reached the court of appeals where the Board failed to apply its announced criteria the Board was reversed. In *J. G. Roy & Sons Company v. National Labor Relations Board*, 1 Cir., 1958, 251 F.2d 771, the court set aside a Board order finding that two corporations were a single employer because the court found that the companies were not engaged in a "straight line operation" and because the evidence did not establish sufficient integration of operations to consider the two corporations

as one as the companies had separate offices and records; had no common supervisors or employees; did not transfer personnel from one to another and each did its own hiring and firing although they were commonly owned and had the same president and directors. See also *Employing Lithographers of Greater Miami v. National Labor Relations Board*, 1962, 5 Cir., 301 F.2d 20, 28-9. *Cf. Miami Newspaper Pressmen's Local No. 46 v. National Labor Relations Board*, C.A.D.C., 1963, 322 F.2d 405.

D.

State Courts Are Entitled To Determine Their Own Jurisdiction On The Basis Of Evidence Presented In The State Courts.

The contention of the petitioners and the United States that the Alabama court should have submitted this cause to the National Labor Relations Board for an advisory opinion is without merit for two reasons.

It is clear from the reading of the Act itself that Congress intended state courts to determine their own jurisdiction without the necessity of submitting the jurisdictional facts to the Board. There would have been no reason for Congress to employ the words "may by rule or decision or by published rules . . . decline to assert jurisdiction" if Congress had intended for the Board to decline to assert jurisdiction on a case by case basis before states could act.

In the *Landrum-Griffin Amendments to the National Labor Relations Act*, 44 Minn. L. Rev. 257, 262, Professor, now Solicitor General Cox, stated:

> The state courts will be free to apply state law in cases which do not meet the Board's jurisdictional standards. When a claim of preemption is raised in a concrete case, the state courts will be required to hear evidence concerning the size of the employer's business, so as to determine whether the NLRB would exercise jurisdiction under its published standards. It would be inconsistent with the general tone of congressional discussion to require a party to apply to the NLRB and have it decline jurisdiction before seeking relief in a local tribunal.

Moreover, the "advisory opinion" procedure of the National Labor Relations Act is not designed to evaluate disputed testimony nor is it designed to afford the parties due process of law. In *Hirsch v. McCullough*, C.A.D.C., 1962, 303 F.2d 208, the United States Court of Appeals for the District of Columbia held that the Board's "advisory opinion" procedure did not comply with the minimum requirements of due process of law and reversed the decision of the district court which had accepted and based its order upon an "advisory opinion."

E.

A State Court Would Not Lose Jurisdiction Over A Labor Dispute Involving An Employer Over Whom The Board Had Declined To Assert Jurisdiction Merely Because The Union Attempted To Extend the Dispute To Employers Over Whom The Board Would Concededly Assert Jurisdiction.

Petitioners' contention that the state court lost jurisdiction over the labor dispute involving Broadcast because

Local 1264 contacted Paul Hamm, owner of a T.V. and appliance business, fails to take into account that Hamm's T.V. and appliance business was a retail business with less than $500,000.00 in sales per annum and therefore failed to meet the jurisdictional standards for a retail establishment. *Carolina Supplies and Cement Company*, 1958, 122 N.L.R.B. 88.

Acceptance of petitioners' contention that a state court would lose jurisdiction over a labor dispute involving an employer that did not meet the Board's jurisdictional standards as a result of union pressure on a secondary employer would result in the union being able to deprive a state court of jurisdiction in every case. The smallest hot dog vendor buys his goods from such interstate companies as Armour.

Petitioners' argument is based upon a misconception of the real meaning of the words "labor disputes" as used in Section 14(c) of the Act. In the *Landrum-Griffin Amendments to the National Labor Relations Act*, 44 Minn. L. Rev. 257, 262, Professor Cox, now Solicitor General Cox states:

> Unfortunately, the amendment speaks of jurisdiction over "labor disputes," where it would have been more consonant with prior legislative and administrative terminology to speak of "unfair labor practices" and "questions of representation"; but it is obvious that these proceedings, and not true disputes, were what the Congress had in mind, I cannot imagine the Board or a court having any doubt upon the question.

We have no question of representation here, Local 1264 has admitted that it represents none of Broadcast's employees. The only questions presented are whether it is an unfair labor practice for Local 1274 to picket Broadcast and bring pressure upon secondary employers to force Broadcast to enter into a collective bargaining agreement with Local 1264 although Local 1264 represents none of Broadcast's employees and whether Local 1264 may bring economic pressure upon Broadcast to require Broadcast to employ Fridge.

Congress gave state courts power to deal with the unfair labor practices. This power must of necessity include the power to enjoin an offending union from attempting to obtain an illegal objective even though the means used to obtain the objective might be peaceful. The state court must have the right to enjoin every act designed to achieve the illegal objective.

The rationale adopted in the *Landrum-Griffin Amendments to the National Labor Relations Act*, 44 Minn. L. Rev. 257, explains the unusual actions of the Board in the *Jemcon Broadcasting Company* cases. Prior to the issuance of its advisory opinion in *Jemcon*, the Regional Director for the Tenth Region of the Board dismissed a representation proceeding filed by Local 1264 against Jemcon Broadcasting Company (Case No. 15-RC-2444) on the grounds that "the Employer's operations in interstate commerce do not meet the minimum standards of the Board for the assertion of jurisdiction." (Appendix C.)

Thereafter the Board issued its advisory opinion in *Jemcon Broadcasting Company*, 1962, 135 N.L.R.B. 362, advising that it would assert jurisdiction.

Thereafter, the Federation of Licensed Broadcast Employees filed a petition with the Board (Case No. 15-RC-2617) against Jemcon Broadcasting Company. (Appendix D.) After a full hearing the Regional Director in his decision and order declined to assert jurisdiction stating:

> The Board standard for exercising jurisdiction over enterprises engaged in the operation of radio stations is a minimum gross volume of business of $100,000 per annum. See *Raritan Valley Broadcasting Co., Inc.*, 122 NLRB 90. Since the total income of Employer does not meet the jurisdictional standards for this industry, I shall dismiss the petition. *Cf. Jemcon Broadcasting Company*, 135 NLRB No. 48. (Appendix D.)

The Board denied the petitioners' request for review Case No. 15-RC-2617. (Appendix E.)

VII.

CONCLUSION

The judgment of the Supreme Court of Alabama should be affirmed or in the alternative the Court should remand this cause to the Supreme Court of Alabama with instructions to apply applicable federal law in accordance with the decision of this Court.

Dated this .... day of January, 1965.

Respectfully submitted

GEORGE E. STONE, JR.,
P. O. Box 1317,
Mobile, Alabama,

WILLIS C. DARBY, JR.,
P. O. Box 1273,
Mobile, Alabama,
Attorneys for Respondent.

CERTIFICATE OF SERVICE.

I, Willis C. Darby, Jr., hereby certify that I have mailed a copy of the foregoing Brief of Respondent properly addressed to J. R. Goldthwaite, Jr., 1431 Candler Building, Atlanta, Georgia. 30303 and to Pierre Pelham, First National Bank Building Annex, Mobile, Alabama, counsel for Petitioners, by depositing the same in a United States Post Office or mail box, with first class postage prepaid.

This the..... day of January, 1965.

WILLIS C. DARBY, JR.,
Attorney for Respondent.

APPENDICES

APPENDIX A.

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA.

IN EQUITY—No. 58,568-H.

BROADCAST SERVICE OF MOBILE, INC.,
Complainant,

versus

LOCAL 1264, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, and WILLIAM RAYBURN, DAVID FRIDGE and H. D. SMITH,
Respondents.

FINAL DECREE.

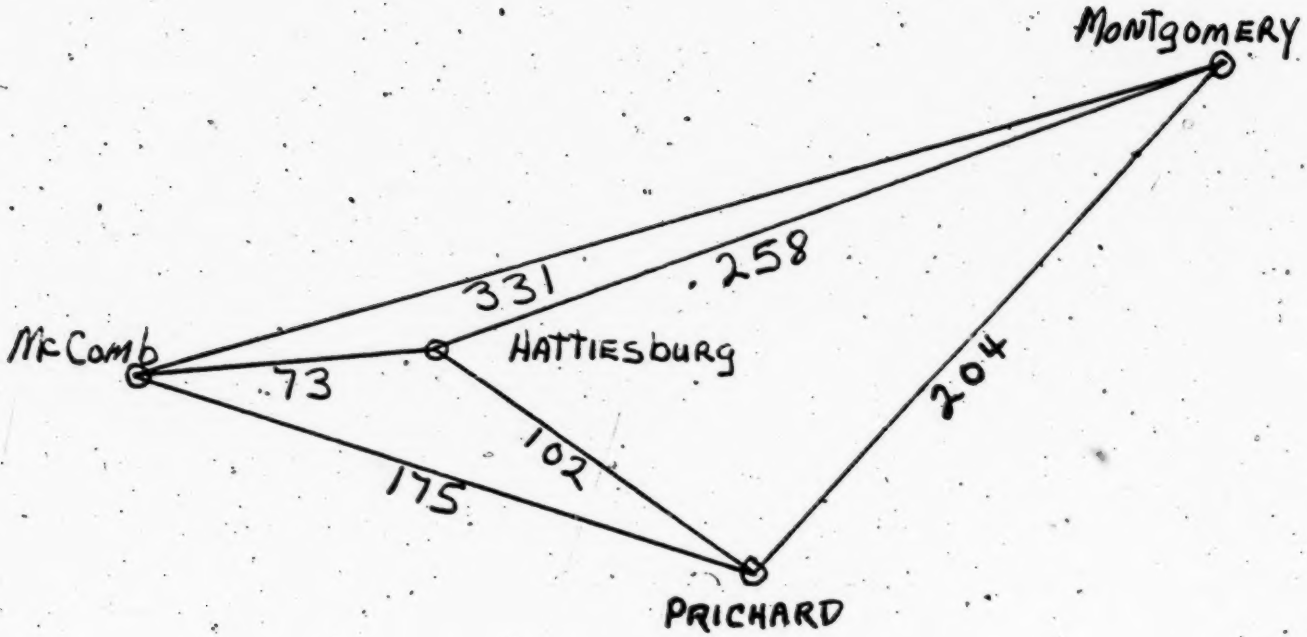
This cause being regularly set down for hearing and being submitted for decree on the pleadings and testimony as heard in open court and the court having duly considered the same, and upon consideration thereof, it is

ORDERED, ADJUDGED and DECREED by the court that the complainant recover actual damages in the sum of TWO THOUSAND FIVE HUNDRED EIGHTY AND 40/100ths ($2,580.40) DOLLARS from the respondents for which let execution issue.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the temporary injunction heretofore issued by this court be, and the same hereby is made permanent.

DATED March 6, 1964.

JOSEPH M. HOCKLANDER,
Judge.



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APPENDIX C.

NATIONAL LABOR RELATIONS BOARD
FIFTEENTH REGION

820 Lowich Building, 2026 St. Charles Avenue
New Orleans 13, Louisiana

Telephone 529-2411
Night 524-8320
September 25, 1961

Re: Jemco Broadcasting Company, Case No. 15-RC-2444

International Brotherhood of Electrical
Workers, AFL-CIO, Local Union 1264
301 Church Street
Mobile, Alabama

Gentlemen:

The above-captioned case, petitioning for an investigation and certification of representatives under Section 9(c) of the National Labor Relations Act, has been carefully investigated and considered.

As a result of the investigation, it appears that, because the Employer's operations in interstate commerce do not meet the minimum standards of the Board for the assertion of jurisdiction, further proceedings are not warranted at this time. I am, therefore, dismissing the petition in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action

by filing a request for such a review with the National Labor Relations Board, Washington 25, D.C. A copy of such request for review must be served upon each of the other parties to the proceeding, including the undersigned. This request must contain a complete statement setting forth the facts and reasons upon which it is based. The request (*original and six copies*) should be filed within ten (10) days from the date of receipt of this letter, except that the Board may, upon good cause shown, grant special permission for a longer period within which to file.

Sincerely yours,
JOHN F. LeBUS
Regional Director

Certified Mail
cc: Jemcon Broadcasting Company
303 St. Francis Street
Mobile, Alabama

Willis C. Darby, Jr., Esq.
307 First National Bank Bldg.
Mobile, Alabama

Board
Washington 25, D.C.

APPENDIX D.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

E. W. JEMISON AND FRANK CONWELL, PARTNERS, D/B/A JEMCON BROADCASTING COMPANY,[1]
Employer

and

FEDERATION OF LICENSED BROADCAST EMPLOYEES,
Petitioner.

DECISION AND ORDER.

Case No. 15-RC-2617

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudical error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.

Upon the entire record in this case, the Regional Director finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization(s) involved claim(s) to represent employees of the Employer.

[1] The name of Employer appears as corrected at the hearing.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act, for the following reasons:

The Employer operates Radio Station WLIQ in Mobile, Alabama. During the period September, 1961, through August, 1962, the Employer had total billings of $61,391 which constituted its entire receipts for that period. Included was the sum of $1,549.15, received from the American Broadcasting Company. More than 90% of its advertising revenues are received from local, as opposed to national, advertising. During the same period, its purchases of goods which originated outside the State of Alabama were approximately $585.

The Board standard for exercising jurisdiction over enterprises engaged in the operation of radio stations is a minimum gross volume of business of $100,000 per annum. See *Raritan Valley Broadcasting Co., Inc.*, 122 NLRB 90. Since the total income of Employer does not meet the jurisdictional standards for this industry, I shall dismiss the petition. *Cf. Jemcon Broadcasting Company*, 135 NLRB No. 48.

ORDER.

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is dismissed.

Dated September 27, 1962 at New Orleans, Louisiana.

(S.) CHARLES M. PASCHAL, JR.,
(Charles M. Paschal, Jr.),
Acting Regional Director for the
15th Region.

APPENDIX E.

WESTERN UNION

TELEGRAM

NSA303

NS LLJ090 Govt Pd—Tdns Pws Washington DC 23 1241P CST—

Kilborn Darby and Kilborn, Attn Willis C Darby Jr Esq—307 First Natl Bank Mobile Ala—

Re: E W Jemison and Frank Conwell, Partners d/b/a Jemcon Broadcasting Company, 15-RC-2617. It is hereby ordered that the petitioners request for review be, and it hereby is, denied as it raises no substantial issues of fact or law warranting review. By direction of the Board—

HOWARD W KLEEB Asso Exec Secy National Labor Relations Board.